United States Court of Appeals
for the Second Circuit

APPENDIX

NO. 77-4153

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

PINTER BROS., INC.
Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

UNITED STATES COURT OF APPEALS
FILED
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A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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II

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Pinter Bros. Inc.

Case Nos.: 29-CA-4281, 29-CA-4554, 29-CA-4570, 29-RC-2888, 29-CA-4594 & 29-CA-4601

3.31.75	Charge filed in 29-CA-4281
6. 4.75	Complaint and Notice of Hearing in 29-CA-4281, dated
6.11.75	Respondent's Answer in 29-CA-4281, dated
6.20.75	Regional Director's Report on Objections, Order Consolidating Cases and Notice of Hearing in 29-RC-2888 and 29-CA-4281, dated
7.10.75	Regional Director's Order Amending Complaint, dated
7.25.75	Regional Director's Order Rescheduling hearing, dated
7.28.75	Regional Director's Order Amending Complaint in 29-RC-2888 and 29-CA-4231, dated
7.28.75	Hearing opened
8.24.75	Respondent's letter requesting reopening of record, dated
8.29.75	Respondent's letter requesting that his be treated as a motion, dated
9. 3.75	Charging Party's letter requesting the reopening of the record, dated
9. 3.75	Charge filed in 29-CA-4554
9. 8.75	General Counsel's Opposition to Motion to Resume Hearing for the purpose of receiving additional evidence, dated
9.11.75	Charge filed in 29-CA-4570
9.23.75	Charge filed in 29-CA-4594
9.23.75	Administrative Law Judge's Order Reversing Ruling and Setting time for hearing, dated
10.17.75	General Counsel's teletype requesting postponing of hearing, received
10.17.75	Administrative Law Judge's teletype granting postponing of hearing, dated
10.23.75	Respondent's letter stating no objections to consolidation of cases, dated
10.29.75	Regional Director's Order Consolidating Cases, Complaint and Notice of Hearing in 29-CA-4554, 29-CA-4570, 29-CA-4594 and 29-CA-4601, dated

III

10.31.75	General Counsel's Motion to Consolidate Cases and to Reopen hearing in 29-CA-4554, 29-CA-4570, 29-CA-4594, 29-CA-4601, 29-CA-2888 and 29-CA-4281, dated
11. 6.75	Respondent's Answer, dated
11.12.75	Order of Administrative Law Judge granting General Counsel's Motion to Consolidate Cases, dated
11.19.75	Hearing closed
4.30.76	Administrative Law Judge's Decision, issued
6.21.76	Respondent's Exceptions to the Decision of the Administrative Law Judge, received
1.12.77	Board's Decision and Order, dated

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Brothers, were any of Pinter Brothers employees represented by a labor organization?

A Yes.

Q Which employees?

A The drivers and the platform helpers.

Q And which labor organization were they represented by?

A Local 807.

Q Did there come a time when you began to discuss the possibility of union organization with your fellow employees?

A Yes.

Q If you recall, will you tell us when that was?

A Around October or November of 1974.

Q With whom did you speak to at that time?

A Several people.

Q Do you recall their names?

A Bea Pagliarulo, Charlotte DeStafanis, Rita Gianinotto, Diane Luffer, Jane Healy, Debbie Gulbransen, Linda Casilli, Jean Basick, Elaine Muldowney.

I can't recall if there were any others at that time.

Q You testified that this was in October or November of 1974?

A Right.

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Q Where did this discussion take place that you are speaking of?

A The discussions took place on -- at lunch, breaks, at home and also during the office working hours.

Q Are you testifying that they took place at lunch and breaks?

Were you peaking of two different things?

A Yes, lunch break and coffee break.

Q What period of time did those discussions take place?

A Anywhere from a couple of minutes to a full hour if we were at lunch.

Q The discussions which began in October, for how long did they continue?

Not the individual discussions but, rather similar discussions, if any.

A They continued until I got terminated.

Q You testified before as to what your working hours were.

Were those your working hours at the time you were terminated?

A At the time I was terminated, yes.

Q Had you worked different hours in the past?

A Yes.

Q What hours were those?

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A 8 to 5.

Q When were your hours changed, if you remember?

A They were effective January 6, 1975.

Q : When were you advised that your hours were to be changed?

A It was around December 27, 1974.

Q By whom were you so advised?

A A notice was posted on a wall in each office by Mr. Jacoby, Mr. Richard Jacoby.

Q And following that change in hours, did you have occasion to discuss your working conditions with your fellow employees?

A Yes.

Q When did that discussion take place?

A After the change in hours, we spoke about it together at work and an awful lot and around January 10th, I believe it was, a large group of us had lunch at the Sizzler.

Q Is that a restaurant?

A Yes.

Q What did you discuss at that time?

A Either writing up a list of grievances that we wanted to give to Robert Pinter --

MR. BURSTEIN: I move to strike that.

It was not in our presence and it is not binding

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upon us. They had a discussion, period.

I object to the question and move to strike out the answer.

JUDGE RIES: I overrule the objection.

A We had decided to write up a list of grievances that we were going to present to Robert Pinter; we were going to write this list at our homes over the weekend and we decided at that time if the list of grievances would not work out that we would definitely contact the union.

MR. BURSTEIN: Same objection.

I move to strike.

JUDGE RIES: Overruled.

MR. BURSTEIN: Here, you are calling for the operation of the mind.

JUDGE RIES: This is a summary version, I take it, of the discussion.

You may explore the nature of the discussion if you wish on cross-examination.

MR. BURSTEIN: I don't want to explore it.

I want to object to it as hearsay.

The fact that I can explore it does not cure the error. This was conversation not in our presence.

JUDGE RIES: You have an automatic exception.

MR. BURSTEIN: All right.

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Q Did you prepare such a list?

A Yes, I did.

Q What did you do with the list you prepared? Did you submit it to anybody?

A No, I didn't.

Q To your knowledge, was the list of this -- were the lists that were prepared by employees submitted to any representatives of management?

A No, they weren't.

Q What determination if any was made as to how to pursue your complaints at that time?

A By having Local 807 represent us.

Q Following this change in your working hours, did you have occasion to be present when any representative of management spoke about the change in working conditions?

A Yes.

Q When did that take place?

A January 10, 1975.

Q Which representative or representatives of management spoke at that time?

A Robert Pinter was asked to speak by Joseph Pinter, Sr.

Q Why don't you just tell us who spoke without telling us what they said?

A Joseph Inter, Sr.

Q Where did the meeting take place?

A In the conference room at Pinter Brothers on the third floor.

Q Which employees were present at that meeting?

A All office personnel.

Q Which representatives of management were present t that meeting?

A Robert Pinter, Richard Jacoby, Charles Brown, all the dispatchers were there, Claims Supervisor Bob Doerler, Warehouse Manager Lee Brown.

Q Were any of Pinter's other employees besides the office employees and workers, as opposed to management representatives present?

Were the truck drivers there?

A No.

Q If you recall, will you tell us what Mr. Pinter said at that meeting if anything?

A Well, he said it had come to his attention that we girls had felt harassed by the change in hours.

MR. BURSTEIN: Is that Joseph Pinter you are talking about?

THE WITNESS: Yes.

And he said he would like his son, Robert, to explain why the change in hours took place because it was originally his decision along with Richard Jacoby's decision to change these hours, and Robert Pinter said,

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"No, that's all right; you tell them."

So after going back and forth a couple of times Joseph Pinter Sr. finally told us that Robert Pinter and Richard Jacoby had decided there was too much confusion at 8 o'clock in the morning with the drivers leaving for work and the girls punching in, so they decided it would be better to change the hours.

That was all that was said at the meeting about the hours.

MR. BURSTEIN: Judge, may I just get something here?

JUDGE RIES: Go ahead.

MR. BURSTEIN: I think the witness testified the original hours, until this January change, were 8:30 to 5:30 and then it was changed to 8 to 5.

Is that right?

THE WITNESS: No.

MR. BURSTEIN: It was 8 to 5 and changed to 8:30 to 5:30?

THE WITNESS: Yes.

JUDGE RIES: I think the record does not reflect that.

MR. BURSTEIN: The record is not clear because he asked her initially what were the hours of employment and she said 8:50 to 5:30 and then she said it was 8 to 5.

MR. WEINRICH: May we go off the record for a moment?

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JUDGE RIES: Off the record.

(Discussion off the record)

JUDGE RIES: On the record.

Q Do you recall if Mr. Pinter Sr. said anything concerning business conditions during this meeting?

A He said business was slowing down with the economic decline that we had and if it did get worse he already asked the drivers if they would go on a voluntary four-day week and he was waiting for their reply.

He said, as far as the office is concerned he doubted that business would get that bad but hewould also hope we would go on a four day week rather than his having to let the least senior employees go.

Q To your knowledge, during the period of your employment with Pinter had Pinter ever laid off any of the office employees in the past for economic reasons?

A No.

Q Following this meeting that you just testified to on January 10, 1975 did you continue to have discussions with your fellow employees?

A Yes, that afternoon at lunch we went to the Sizzler Restaurant.

Q Who was present at the Sizzler Restaurant? How many people were present?

A There were about 13 people present.

Q Are you familiar with the other people who are alleged in the complaint in this proceeding as having been either laid off or terminated?

A Yes.

Q Do you recall if they were present?

A Yes, they were.

Q What was discussed? Will you tell us what was discussed at this meeting, what you said and what was said to you?

MR. BURSTEIN: Same objection.

JUDGE RIES: Overruled.

A I had asked the girls if they wanted to write up a list of grievances over the weekend and we would submit this list of grievances to Robert Pinter and that if nothing good would come out of this list then we would ask Local 807 to represent us.

Q And this took place following Mr. Pinter's speech?

A Yes.

Q Did you return to work after meeting at the Sizzler on January 10th?

A Yes.

Q Upon your return to work did you observe any representatives of management in the parking lot?

A Not in the parking lot.

Q Did you observe any representatives of management

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at all upon your return?

A Yes.

Q Whom did you observe?

A Richard Jacoby.

Q Where did you observe Mr. Jacoby?

A In the [illegible] of Pinter Brothers.

Q What [illegible] place in the lobby when you observed Mr. Jacoby?

A We still had more time to our lunch and some of us were standing in the lobby and were talking about what went on during our lunch and Mr. Jacoby came into the lobby and said, "The door is not locked; you can come in," and he left.

Q Did there come a time when you or, to your knowledge, any of the other office employees contacted Local 807?

A Yes.

Q When was that first contact made, if you know?

A July 14, 1974 -- not July -- January.

Q Did you make that contact?

A No.

Q Do you know who did?

A Bea Pagliarulo.

Q Let me ask you this, Mrs. Barber.

Did there come a time when you met with any

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representative of Local 807?

A Yes.

Q When was that?

A The morning of July 15th.

JUDGE RIES: You mean January 15th?

THE WITNESS: Yes. I'm sorry. January 15th.

Q With whom did you meet?

A Ted Spera.

Q Who is Ted Spera?

A The shop steward for the truck drivers at Pinter Brothers.

MR. BURSTEIN: Could we have a time on that?

MR. WEINRICH: Yes.

Q Where did you meet with Mr. Spera?

A In the hallway -- in one of the hallways. I believe it was between the second and first floor of Pinter Brothers.

Q At what time of day did you meet Mr. Spera?

A 10 after 8 in the morning.

Q Was anyone else present?

A Not to my knowledge.

Q If you recall, will you tell us what Mr. Spera said to you and what you said to him, if anything?

MR. BURSTEIN: Same objection, not in the presence of the respondent employer, not binding.

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Is Mr. Spera going to be a witness?

JUDGE RIES: Overruled.

Continue.

MR. BURSTEIN: May I inquire whether Mr. Spera will be a witness?

MR. WEINRICH: I haven't decided at this point.

MR. BURSTEIN: May I just place on the record this is an egregious violation of the hearsay rule.

This is a conversation had between her and a third party, not in the presence of any representative or agent of the employer and you rule that it is admissible evidence?

JUDGE RIES: I certainly do.

That is not the hearsay rule as I understand it.

Do you recall the question?

THE WITNESS: Yes.

As it turned out, there was no conversation. He slipped union cards into my pocketbook and that is all I recall took place.

Q When you say he slipped union cards into your pocketbook, what type of union cards were these?

A They were green cards, authorization cards.

Q Following your receipt of these cards from Mr. Spera what did you do with the cards?

A I kept them in my pocketbook and spread the word

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around to all the girls to meet for lunch.

Q How many girls did you speak to?

A About 18, 20, at different times.

Q You say "at different times". Where did the conversations take place?

A At Pinter Brothers that morning after I received the cards.

Q Do you recall the names of the people you spoke with?

A I spoke to Bea Pagliarulo.

Q Where did you speak to her?

A In the office.

Q In whose office?

A Pinter Brothers.

Q Where in Pinter Brothers' office?

A Charles Brown's office.

Q Is that where he worked?

A That's where I worked.

Q Was Mr. Brown present at the time?

A He could have been. I don't recall.

Q Who else did you speak with?

A The aforementioned girls. Between myself and Bea Pagliarulo, we spread the word to girls who spread the word to other girls to meet that day at the Deer Park Restaurant for lunch.

Q Did you meet for lunch there?

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A Yes.

Q How many girls were present at that time?

A About 13.

Q Did you speak at that meeting?

A Yes, I did.

Q What did you say?

A I told the girls I had been given the authorization cards by Teddy and that all we had to do was sign them and the union would then be representing us and we were going to meet later on that night.

Teddy was to call us at the Deer Park Restaurant to set up an appointment for that evening and it was set at the Sunset Lane Bowling Alley and I told them all to be there and to sign the cards and return them to me.

MR. BURSTEIN: Pardon me.

Is this January 15th you are talking about?

THE WITNESS: Yes.

Q Were any cards returned to you at that time?

A Yes.

Q Who returned the cards to you at that time, if you remember?

A The girls that were present at lunch, Bea Pagliarulo, Charlotte DeStafanis, Jane Healy, Debbie Gulbrandsen, Rita Gianinotto, Rosalie Palazola.

Q Did you sign a card at that time?

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A Yes, I did.

MR. WEINRICH: Will you mark this as General Counsel's Exhibit 2 for identification.

(Document marked General Counsel's Exhibit 2 for identification, as of this date)

Q I show you General Counsel's Exhibit No. 2 marked for identification and ask you if you can identify that document (handing to witness).

A That is the authorization card that I signed.

Q Did you read the card before you signed it?

A Yes.

Q Is that your signature which appears on the bottom line?

A Yes.

Q Did you fill in all the other information on the card yourself?

A Yes.

Q Did you date the card?

A Yes.

Q What date appears on that card?

A January 15, 1975.

MR. WEINRICH: Your Honor, I ask that General Counsel's Exhibit 2 marked for identification be offered into evidence.

JUDGE RIES: Mr. Burstein?

MR. BURSTEIN: No objection.

JUDGE RIES: General Counsel's Exhibit 2 for identification is received in evidence.

(General Counsel's Exhibit 2
for identification was received
in evidence, as of this date)

Q On the date the meeting occurred which you have just testified to, did you have occasion to speak with any representatives of management?

A Yes.

Q With whom did you speak?

A Robert Pinter, Charles Brown and Mr. Jacoby.

Q Where did this conversation take place?

A In Joseph Pinter's office.

Q What time of the day did the conversation take place?

A Approximately 10 to 5.

Q If you recall, will you tell us what if anything Robert Pinter said to you and what you said to him.

A When I came into the office he showed me a list of telephone numbers and he asked me if I could identify these numbers as my own and I did.

They were my home numbers and he had my name written next to these telephone numbers. And he said to me, "Vera, you know you are not supposed to make personal phone calls. What are we going to do about this?"

I had said to everybody concerned that I guess it was kind of late to apologize for something that I had done wrong but I was sorry and I offered to pay for the phone calls and I was told that would not be good enough and Robert Pinter told me that this was the November survey and he was waiting for a survey from the telephone company for September and October -- oh, also he had asked my supervisor, Charles Brown if I had used the telephone for my work and Charles Brown said yes.

Robert Pinter said, "From now on she is not to touch the phone. If any phone calls come in they are going to myself or to Charles Brown" and I was not to determine what an emergency is.

He said after the survey was received for September and October which he was waiting for -- he said he would receive them probably the following week -- he would decide what he would do, and he dismissed me.

Q When you say he dismissed you you were not terminated at that time, were you?

A Oh, no. He dismissed me from the office. He told me that was all.

JUDGE RIES: Can I ask what you mean by survey?

THE WITNESS: It was for the local telephone numbers. Usually on the telephone bill they don't list local phone numbers. So he asked for this list from the New York Telephone Company to find out what local calls had been made.

MR. BURSTEIN: The question has been asked and answered. She said those were her calls.

JUDGE RIES: I believe she said that.

MR. WEINRICH: I will withdraw the question.

Q For how long had you been making personal calls while working for the company?

In November 1975, the period for which the survey took place were you making more calls then than you had at other times?

A Probably, yes.

Q Were you ever spoken to about making calls before?

A My supervisor, Charles Bell had mentioned a couple of times in the seven years of my employment that I should take it easy on telephone calls.

Q How many times did he mention it?

A About two or three times.

Q And prior to January 15, 1975 when was the most recent time?

A June of 1974.

Q At that time what did you say, if you can recall? What did Mr. Brown say to you about the calls?

A He asked me to take it easy on personal calls.

Q Did the company have a personnel book that they handed out to employees?

A Yes.

Q Did that book contain any rule concerning personal calls?

A No.

Q Did the company have a bulletin board?

A Yes.

Q Was there any posting concerning telephone calls on that bulletin board?

A No.

Q During the period of time you worked for the company prior to January 15, 1975 to your knowledge had any other employee been fired for making personal phone calls?

A No.

Q What time did you leave work on January 15th?

A 5:30.

Q Did you have occasion to meet with your fellow employees that day?

A Yes.

Q With whom did you meet?

A All the girls I mentioned before.

Q Where did the meeting take place?

A At the Sunset Lane Bowling Alley.

MR. BURSTEIN: Was this after work?

Q Was this after work?

A Yes.

Q At what time?

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A About 7 o'clock.

Q Was anyone present from Local 807?

A Yes.

Q Who was present?

A Ted Spera.

Q Was any other representative of Local 807 present?

A No.

Q What took place at that meeting?

A I returned the cards that Ted had given me that morning, the signed cards.

I returned them to him. He told us the benefits that we would receive from Local 807 and we were just having a really good talk about everything.

He told us now that we signed the authorization cards the union was in and we didn't have to be so quiet about it any more.

And that was about all.

We felt secure when we left the bowling alley that the union was representing us.

Q For how long did the meeting last?

A Probably about an hour, an hour and a half.

Q Did you report to work on January 16, 1975?

A Yes.

Q Did you recall if there was any further discussion on that date concerning personal telephone calls?

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A Yes.

Q Was that discussion with a representative of management?

A Yes.

Q Which representative?

A Richard Jacoby.

Q Was it an individual discussion or was it a group discussion?

A A group discussion.

Q When did it take place?

A The morning.

Q About what time?

A Just about 9.

Q Where did it take place?

A In the first floor of the office.

Q Who was present at that meeting?

A All office personnel.

Q What did Mr. Jacoby say, if you recall?

A He told us they were in the process of getting surveys on Local numbers from the telephone company, that they found that the personal telephone calls were getting out of hand, that two girls had been warned the day before and that everybody better be careful because they were going to start checking up on the personal telephone calls.

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Q During your employment with Pinter were any similar group meetings held concerning telephone calls?

A No.

Q Did you have occasion to discuss unionization with your fellow employees on January 16th?

A Yes.

Q Where did that discussion take place?

A We had lunch again at the Deer Park Restaurant and we also --

MR. BURSTEIN: Pardon me.

I am confused as to the date. The evening meeting was January 16th, wasn't it?

JUDGE RIES: The 15th.

MR. BURSTEIN: After work?

MR. WEINRICH: Yes.

MR. BURSTEIN: I'm sorry.

JUDGE RIES: Go ahead.

THE WITNESS: So we all got together at lunchtime again at the Deer Park Restaurant.

Q Did you drive to lunch?

A Yes.

Q Does Pinter Brothers have a parking lot?

A Yes.

Q Do the office windows face onto the parking lot?

A Yes.

Q Did you observe anybody watching you leave the premises on the 16th?

A Yes.

Q Whom did you observe?

A Richard Jacoby and Robert Pinter.

Q Where did you observe them?

A I observed them from the parking lot. They were looking out of the dispatch window.

Q How long did you take at lunch?

A An hour.

Q Was that your normal lunch period?

A Yes.

Q When you returned did you observe any management officials before you went into the building?

A I don't recall.

Q You testified on January 15th you had also eaten lunch at the Sizzler.

A When?

Q January 15.

A No.

Q I'm sorry.

At the Deer Park Restaurant?

A Yes.

Q On your leaving the company premises at that time did you observe any company officials at the windows?

A I don't recall.

Q Do you recall if you observed any company officials at the windows when you returned on the 15th?

A I don't recall.

Q What time did you leave work on January 16th?

A 5:30.

Q Was anything said to you before leaving work on January 16th?

A No.

Q Did Pinter Brothers have a night shift as well as day shift?

A Yes.

Q Did there come a time when you saw or attempted to see any of the evening employees concerning unionization?

A Yes.

Q When was that?

A January 17th.

Q At what time of day?

A Between 5:30 and 6 p.m.

Q Had you worked that day?

A Yes.

Q Did you work the full day?

A Yes.

Q Were you paid on that day?

A No.

Q When you left work were you told -- were you given any indication that your employment was to be terminated?

A No.

Q After you left work what did you do on that evening?

A I stayed in the parking lot.

Q Where in the parking lot?

A In my car.

Q Where was your car located with respect to the entrance to the building?

A Not far. There's like parking along the side going up the walk and then there is more parking where the trucks are parked facing the doorway and they are closer in.

I was parked in one of those parking spaces.

Q Facing the doorway?

A I don't recall. It was either facing the doorway or -- I don't recall which way it was facing.

Q Were you alone or with other employees?

A I was with other employees.

Q Whom were you with?

A Joanne Berderane, Bea Pagliarulo and Charlotte DeStafanis.

Q Will you tell us what happened while you were waiting in the parking lot?

A We were waiting to see Lee Sinclair. We had wanted to find out if there was enough support.

We needed about five of the night girls to vote yes for the union. We understood at that time --

Q Well, I am not interested in that.

You were waiting for Miss Sinclair?

A Yes.

Q Did you see Miss Sinclair?

A Eventually.

Q Did you see any other night employees?

A Yes.

Q Whom did you see?

A Alberta Nash.

Q At about what time did you see her?

A About 10 to 6.

Q What did you say to her, if anything?

A I thought it was Lee Sinclair and when I went up to the car and saw I was mistaken I didn't want to get Lee Sinclair in any kind of trouble so I asked her if she knew how Lee Sinclair's grandchild was and she told me and Mr. Pinter had gotten into his car --

Q Which Mr. Pinter are you talking about?

A Joseph Pinter Sr.

Q What did you observe him do?

A He got in his car and he pulled his car up to Alberta Nash and myself.

We were standing at her car.

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He said, "How are my lovely night girls?"

She said, "Fine."

I saw him look into his side view mirror. Before that he said, "Have a very nice weekend now."

He was leaving but he looked into his side view mirror and he started to pull away. He made a U-turn and he went back to the office and I saw him walk in.

Q Into the office?

A Yes.

Q Where were the other three girls standing when Mr. Pinter drove up?

A They were in my parked car.

Q Where was your parked car with relation to Mr. Pinter's car?

A About 20 feet away.

Q Behind or in front?

A Sort of next to it.

Q On which side?

A They were on his right side.

Q On the driver's side or on the opposite side?

A The opposite side.

Q And where were you?

A I was directly behind him.

Q On which side?

A Driver's side.

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Q Did you remain in the parking lot after you observed Mr. Pinter return to the company offices?

A No.

Q What did you do?

A I got into my car. The other girls got into their car and I left.

Q Did you ever see Lee Sinclair that evening?

A As I was leaving, outside the guard gate she was pulling in.

Q Did you have occasion to return to Pinter Brothers that evening?

A Yes.

Q At what time?

A About 10.

Q With whom did you return?

A My sister-in-law and her husband and my husband.

Q Who is your sister-in-law?

A Bea Pagliarulo.

Q What did you do on your return?

A Well, we wanted to wait until a couple of the night women came out of work to see if they wanted to go to a meeting with Ted Spera.

Q Did you see any night employees?

A Yes.

Q Which employees did you see that evening?

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A Well, I saw Carol Birch leave the parking lot and I tried to stop her but she wouldn't stop for me. I saw Alberta Nash and the same thing happened, she wouldn't stop.

Then Lee Sinclair pulled out and she pulled over for us to talk to her.

Q And did you speak to her?

A Yes.

Q What did you say to her?

A I told her there was going to be a meeting with Teddy --

MR. BURSTEIN: Same objection.

JUDGE RIES: Overruled.

A I asked her how things went.

She told me she wasn't going to come to any meeting, that Carol Birch was shaken, everybody was scared; Mr. Pinter came into the office at 6 dclock after I had seen him leave that night when he went back to the office and he went over to Lee Sinclair and asked her if any of the day girls had approached her --

JUDGE RIES: As Mr. Pinter has earlier objected to this, this sort of testimony I consider hearsay and I am not going to pay any attention to it.

MR. WEINRICH: I will move ahead.

MR. BURSTEIN: I ask that it be stricken.

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JUDGE RIES: Yes, it is considered stricken.

MR. WEINRICH: As to what was said to her rather than what she said?

JUDGE RIES: That's right.

Q What time did you leave the company premises that evening?

A About 11 o'clock.

Q Did you observe any representatives of management?

A No.

Q Is there a night manager?

A Yes.

Q Who would that be?

A Artie Doeler.

Q Were you scheduled to work on Saturday, January 19th?

A No.

Q Did you receive any communication from the company over the weekend on January 19th and 20th?

A No.

Q Did you receive any telegram or notice of telegram?

A I received a notice of telegram.

Q Did you see the telegram over the weekend?

A No.

Q Did you subsequently receive a copy of the telegram?

A At a later date.

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Q When was that?

A About a week and a half later.

MR. WEINRICH: I ask this be marked as General Counsel's Exhibit 3 for identification.

(Document marked General Counsel's Exhibit 3 for identification, as of this date)

Q I show you General Counsel's Exhibit 3 for identification.

Will you tell us what that document is?

A A telegram terminating my employment with Pinter Brothers.

Q There is a notice stapled to the top of that telegram, is that correct?

A Yes.

Q When did you receive that notice?

A I received that notice about 3 a.m., January 18th, when I came home. It was on my door and it was made out to Mrs. Rowan.

Q Does that notice contain a checkmark on it?

A It says Has been placed under your door.

Q Was there a telegram under your door?

A No.

Q From where did you get this copy of the telegram?

A Lindenhurst Taxi Station.

Q Is that a telephone office?

A They have a Western Union office inside.

Q Did you pick it up?

A Yes.

MR. WEINRICH: I ask that General Counsel's Exhibit 3 for identification be admitted in evidence.

I have shown a copy to Mr. Burstein.

JUDGE RIES: Any objection?

MR. BURSTEIN: No objection.

JUDGE RIES: General Counsel's Exhibit 3 for identification is received.

This consists of the notice of telegram as well as the telegram itself.

MR. WEINRICH: That is correct.

(General Counsel's Exhibit 3 for identification marked in evidence, as of this date)

Q Did you report to work on Monday, January 20,1975?

A Yes.

Q What happened when you reported to work?

A I went inside to punch in on my time clock and my time card was not there.

Mr. Pinter along with Mr. Jacoby came over to me and Mr. Pinter asked me if I had received the telegram.

I said, "No. What telegram?"

He said, "You got the pink slip."

I said, "Did I? Why?"

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He said, "Business is slow."

I said, "Is that all?"

He said, "That is all," and I left.

Q Which Mr. Pinter is this?

A Joseph Pinter Sr.

Q Did Mr. Jacoby say anything?

A No.

Q Was anything said to you about personal phone calls at that time?

A No.

Q Following your conversation with Mr. Pinter on the morning of January 20th did you have occasion on that day to speak with any representative of the union?

A Yes.

Q With whom did you speak?

A Whitey Schneir.

Q When did that conversationtake place?

A In the lobby.

Q When?

A I guess about 8:30.

Q How long was that after you spoke to Mr. Pinter?

A About 30 seconds.

Q Were you present when Mr. Schneir spoke to Mr. Pinter?

A Yes.

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Q Where did that conversation take place?

A At that same time. Mr. Pinter came out into the lobby.

Q Is this Mr. Pinter Sr. again?

A Yes.

He told Whitey -- he said, "These girls have been terminated and if you don't mind, I don't want you holding any meetings on my private property."

Q What did Mr. Schneir do?

A He said, "Okay."

Q Who was present at that time when Mr. Pinter made those remarks?

A Myself, Whitey Schneir, Ted Spera, Jane Healy and Debbie Gulbrandsen.

Q What did you do following that incident?

A I filed for unemployment.

Q Were you ever shown a telephone survey other than the November survey shown to you by Robert Pinter?

A No.

Q During your period of employment since 1968 do you know of any other employees who were ever fired by the company?

MR. BURSTEIN: I think that question was asked and answered. You mean for telephone calls?

MR. WEINRICH: No. This is a different question.

A Yes.

Q Do you know if these employees were terminated by telegram?

A No, they were not.

Q How were they terminated, if you know?

A They were told by Mr. Pinter, Sr. or by Richard Jacoby about five minutes before quitting time on Friday that they were terminated.

Q Did you distribute any cards at work?

A Yes.

Q To whom did you distribute cards at work?

A Joanne Berderane.

Q Where did you give her the cards?

A In the lunchroom of Pinter Brothers.

Q When was that?

A On the morning of January 16th.

Q Did you distribute any cards following your termination from employment?

A Yes.

Q Where did you distribute those cards?

A At Doris Bonadonna's house.

Q Did you vote in the National Labor Relations Board election held at Pinter Brothers on March 26, 1975?

A No.

Q Did you go to Pinter Brothers' premises in order to vote?

A Yes.

Q How did you go there? By car?

A By car.

Q Were you alone in your car? Did you drive?

A I drove.

Q Were you alone or with other people?

A I was with other people.

Q Who was in your car with you?

A Bea Pagliarulo.

Q Is the gate customarily opened or closed?

A Closed.

Q How does it open?

A Electrically.

Q Who opens it?

A The guard.

Q Is there normally a guard in the guardhouse?

A There is normally one guard.

Q Was the gate open or closed when you pulled up?

A Closed.

Q You testified Robert Pinter came out. Where did he come out of?

Q He opened the gate or somebody opened the gate wide enough so he could go through the gate and walk over to my car.

Q And the other people you mentioned, where were they?

A Outside of the gate.

Q Did Mr. Pinter speak to you?

A Robert Pinter spoke to me.

Q What did he say?

A He told me I was on private property, this was a private road so I just better turn my car around and get out.

Q Did you say anything to him?

A I said, "I came here to vote."

Q What did he say?

A He said, "You are not going to do anything so just get out."

Q Did any of the other people speak?

A Warren Mangan asked Robert Pinter if he recognized the four of us and Robert Pinter said yes, and that was all I can recall. I left.

Q At what time did you arrive to vote?

A About 7 o'clock.

Q In the morning or at night?

A At night.

Q During the course of your employment with Pinter Brothers were you ever criticized for your work?

A Never.

Q Were you ever threatened with discharge?

Q When you say in the office was it while you were congregating around somebody's desk?

A It wasn't really congregating.

We happened to be by somebody's desk. It would be mentioned in passing. Comments would be made.

Q That was during your working hours, wasn't it?

A Sometimes.

Q Did you make up any memorandums of those discussions? Did anybody write up anything about those discussions?

A I am not sure.

Q Did you or the other persons with whom you consulted write up a little memorandum, something like your statement here?

A No.

Q Covering the subject of your discussion?

A No.

Q In addition to the approximately eight persons who, together with yourself, discussed the matter of joining a union, did you or the others attempt to interest the other employees in the union?

A Yes.

Q And that was done on the company premises, sometimes at lunch, sometimes during coffee breaks, and sometimes during working hours?

A Yes.

to turn unfavorable?

A Yes.

Q You were in the bookkeeping department and were familiar with the billings, weren't you?

A Yes.

Q And you know what a pro is, don't you?

A Yes.

Q And you know what a bill of lading is?

A Yes.

Q And you know what a receipt is?

A Yes.

Q And you know how to enter the volume of shipments?

A Yes.

Q And you know what was the revenues received?

A Yes.

Q In all fairness, isn't it true that starting in October, 1974, the volume of shipments and the revenues for Pinter Brothers began to decline as they did for all trucking companies?

A Yes.

Q And isn't it true that there were drivers around who had no work but Pinter kept them working, kept them on the job sweeping and tried to keep them employed?

A Yes.

Q And isn't it true that there wasn't a lot of work for the girls in the office but Pinter kept them working?

A Yes.

Q So there was a real economic problem?

A Yes.

Q The trucking companies were laying off personnel?

A Yes.

Q And drivers were being put on shape, weren't they? Do you know what that means?

A Yes, when drivers come in to wait and see if they can be employed.

Q And a lot of drivers were being laid off and they were on shape, weren't they?

A Yes.

Q And in other offices of trucking companies, girls were being laid off, weren't they?

MR. WEINRICH: I object to that.

There is no indication that the witness knows that.

MR. BURSTEIN: I will withdraw that.

Q You do know that in Pinter, there was a very sharp decline in business during October and November upto January, as compared to the previous year?

A Yes.

Q You said Mr. Jacoby walked into the lobby where you and some 13 girls were congregating?

A Yes.

Q Was there a rule that said Mr. Pinter couldn't walk into the lobby?

A No.

Q Did he reprimand anybody for being in the lobby?

A No.

Q Did he ask you what you were doing in the lobby?

A No.

Q Did he tell you you were free to go inside?

A Yes.

Q Did anybody tell you you couldn't talk with your fellow workers?

A No.

Q You testified, Mrs. Barber, that sometimes starting, I guess it was on January 15th or 14th, and correct me if I am in error, you spoke with a Mr. Spera who was the shop steward, the driver's shop steward?

A Yes.

Q And that day he met you in the hallway about 8:10 a.m.?

A Yes.

Q Was that the beginning of your working hours?

A No.

Q Prior to it?

A Yes.

Q And he handed you a group of authorization cards?

Q And you did agree that it was a pretty large number, didn't you?

A Well, yes.

Q Did you offer to pay for them?

A Yes.

Q Did Mr. Pinter tell you that the girls were interfering with calls from customers? And that customers were complaining they couldn't reach the telephones?

A No.

Q Did you ever hear that from anybody?

A No.

Q Isn't it a fact that when calls were being placed, in many instances, your wire was tied up with your personal calls?

A Not to my knowledge.

Q How many personal calls did you make a day?

A About three a week.

Q Three a week?

A Yes.

Q Is that what the record shows that you saw?

A I don't know.

Q Did you ask to look at the record?

A I saw the record.

Q Are you saying to the Administrative Law Judge that the calls you made were three a week and that was why you

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were discharged?

A If it turned out to be more, I am not embarrassed by it.

If there were five a week, there were five a week.

I don't recall making calls every day.

Q Did you ask to look at the list?

A Yes, but while I was standing there, I didn't count them.

It looked to be about 15 calls for the month of November so I assumed it was three a week.

Q So it is your recollection that all the calls you made were three a week.

How much time did each call take?

A Robert Pinter has written down the time for the one call that took more than five minutes.

Q Did he also tell you he was asking for a printout of September and October calls?

A Yes.

Q Did you say that the record would be no betterfor September and October than for November?

A I never said that.

Q Is it your statement that in September and October, you also made just three calls a week?

A I don't know.

I know I didn't make the statement that they wouldn't

5:30 and 6 p.m., is that right?

A Yes.

Q And you remained in the parking lot with three other people because you wanted to speak to one, Lee Sinclair?

A Yes.

Q And then you started to say that "We understood at the time" and General Counsel interrupted you.

What did you mean when you said that?

A I wanted to ask Lee Sinclair if we had five people.

Those were the figures I understood at the time after speaking to a union representative, Joe Marino, that if we had five of the night people, we would have a majority, but I understood from my conversation with Joe Marino that if we didn't have a majority, we could forget about the night crew and form our own union for the day and then they could later join as their own unit.

It was a misunderstanding.

So I didn't want the night people to get into trouble.

I just wanted to find out if they had five, and if they didn't to forget about it.

Q When you say "To get into trouble," you say you were actively helping to organize a union from September, 1974, to January 17th.

Forgetting the termination, did anybody ever speak to you about your organizing for the union?

A No.

Q Did anybody ever reprimand you?

A No.

Q Did anybody ever threaten you with dismissal or suspension or other discipline?

A No.

Q In any event, you said that Mr. Pinter, Sr. pulled in in his car and he said, as I recall your words, "Have a nice weekend" and "How are my lovely night girls?"

A Yes.

Q Did you find that threatening?

A No.

Q And then you said you think he saw something in the side view mirror?

A He looked into the side rear mirror.

Q Were there cars parked around where he was parked?

A Yes.

Q Was it a free space?

A Yes.

Q Was he backing up?

A If I can explain --

Q Was he backing up?

A No, he was coming to go out.

Q If he was coming around or going forward, is it unusual to look into the rear view mirror?

Q Do you know whether Bea had received her telegram earlier?

A I found out the next morning she had received a telegram.

Q Did she call you up when she received it? And did she tell you not to accept yours?

A She didn't tell me not to accept my telegram.

Q You testified, Mrs. Barber, that neither you nor Bea nor Debbie nor Jane boted at the election?

A Right.

Q Were you present during the time when a representation hearing with -- when a representation was held before the National Labor Relations Board?

A Yes.

Q You were present?

A Yes.

Q Do you recall that prior to that hearing and at that hearing, there was given to the National Labor Relations Board a list of employees?

A Yes.

Q Was your name on that list?

A No.

Q Did you note that your name wasn't on there?

A Yes.

Q Did you note that Debbie's name wasn't on there?

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A About two desks away.

Q How many desks in total would be in this area where your supervisor's desk would be and your desk?

A About three.

Q What was your supervisor's name?

A Charles Brown.

Q And Mr. Charles Brown is a controller?

A Yes.

Q What were Mr. Brown's hours?

A I believe they were 8 to 6.

Q Would Mr. Brown customarily be called a customer's man or was he an in-office man?

A In-office.

Q What amount of time would you say Mr. Brown spent in the office as compared to away from the office?

A The majority of his time was spent in the office.

Q The majority can be anything from 50.1 percent to 99 percent.

A 90 percent.

Q What percentage of the time Mr. Brown would spend in the office would be spent at his desk?

A 100 percent. Do you mean at his desk rather than being on a break?

Q I am talking about at his desk.

A He was at his desk maybe 90 percent of the time of the day.

Q Who else occupied that office besides yourself and Mr. Brown?

A Claire Dorr, Pat Ossenfort, Sue Burrier, Dianne Luffer and Doris Bonadonna.

Q Was Mr. Brown ever present when any of these phone calls that you made of a personal nature were being made?

A Sometimes.

Q When you say sometimes, are you able to put any number on that? Would it be a majority of the time or a minority of the time or could you say what percentage?

A A minority of the time.

Q Did you have any occasion to speak to Mr. Brown at all about telephone calls?

MR. BURSTEIN: I think she testified that Brown spoke toher on two or three occasions.

JUDGE RIES: Yes, she did.

MR. BURSTEIN: She has already testified twice, once on direct and once on cross.

JUDGE RIES: Yes, that's right.

Q When was the last time Mr. Brown spoke to you about phone calls?

MR. BURSTEIN: She testified June 1974.

JUDGE RIES: Mr. Mangan, we are running into a problem because you were in and out of the hearing.

weekend draw up this list and present it to him, and that if we didn't get any results from the list of grievances then we would call in a union.

Q What if any action was taken as a result of that meeting?

A We contacted the union.

Q Did you contact the union?

A I did, yes.

Q When did you do that?

A I phoned the truck drivers' shop st eward, Spera.

MR. BURSTEIN: Could we have thedate?

Q When did you do that?

A I phoned him on January 14th.

Q Which union was Ted Spera the shop steward for?

A Local 807.

Q Will you tell us if you recall what if anything you said to Ted Spera during that telephone conversation and what he said toyou?

A Yes.

I told Ted that we had all been discussing a union and that it locked as though we had quite a bit of support an dI didn't know who to contact.

He advised me that he could give me cards to sign and we could make our contact with the union directly through him.

So I arranged with Ted to meet Vera or myself at work but beforework hours and he would give us the cards and we would have them signed and returned to him.

Q Did you meet Ted Spera the following morning?

A I did not, no.

Q Did there come a time during that day when you were given a card?

A Yes.

Q From the union?

A Yes.

Q **When** was that?

A They were passed out at lunch.

We met at lunch at the Deer Park Pizza place.

Q Who was present at that time?

A There were roughly 17 girls from the office.

Most of the same girls I mentioned before.

Q Had you been given a card before the luncheon meeting or did you receive your card at the meeting?

A I received it at lunch.

Q What did you do with the card?

A I filled it out, signed it and gave it back to Vera Barber.

Q Did anyone tell you anything about [illegible]e card at that time?

A Ted Spera had told me in our conversation the night

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union on January 15th?

A I'm sorry, could you repeat it?

Q Yes.

Upon your return from lunch on January 15, 1975, did you have occasion to speak to any of your fellow employees concerning the union?

A During work?

Q During working hours?

A No.

Q Did you have occasion to speak with any representatives of management during the day of January 15, 1975?

A Yes.

Q With whom did you speak?

A Robert Pinter and Dick Jacoby.

Q And where did your conversation with Robert Pinter and Dick Jacoby take place?

A In Mr. Pinter, Sr.'s office.

Q At what time of day?

A Approximately five o'clock.

Q Was anyone else present?

A No.

Q How were you called into the office?

How were you summoned?

A Robert Pinter phoned me on my extension and told me to come down to Mr. Pinter, Sr.'s office.

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Q Did you have a phone on your desk?

A Yes, I did.

Q Was it a direct dial phone or goes through the swithboard?

A No, it was a direct dial.

Q If you recall, will you tell us what if anything Robert Pinter or Mr. Jacoby said to you during the conversation and what you said to them?

A Robert Pinter showed me a list of phone calls.

He had my name written next to some of the numbers.

He asked me if I recognized them. I said yes.

He asked me if they had been personal calls. I said yes.

He asked me what I thought he should do about it.

I said, I don't know.

I said, I apologize, and I want to pay for them.

Bobsaid that that wouldn't be sufficient and that he was waiting for additional surveys before he decided what to do.

Q Do you recall if anything else was said during that conversation by Mr. Pinter to you?

A No, I don't recall.

Q Do you recall if you said anything else to him?

A Not at that time I don't recall saying anything else to him.

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Q Do you recall if you said anything to him concerning what would take place in the future concerning telephone calls?

A I had gone back into Mr. Pinter's office --

Q I mean, at the first meeting that you attended?

A Oh, I asked him, I said that I didn't see any point in him -- I said to him I didn't see any point in him going back in the survey, that he should warn you and look ahead to see if you stopped.

Q Did you have occasionto speak with any other management representative on January 15th?

A I spoke with the supervisor, Catherine Turk.

Q When did you speak with Catherine Turk?

A About twenty-five after five.

Q Where did the conversation take place?

A At her desk.

Q Was anyone else present?

A Not at her desk.

There were people at their own desks which were nearby.

Q Was there anyone else that was party to the conversation?

A No.

Q If you recall, will you tell us what, if anything, Catherine Turk said to you and what you said to her?

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A Catherine said that the following day I was to report in her office to be assigned as a floater, that I was being removed from my job as on-hand clerk because I couldn't be trusted with the telephone.

Q Did you respond to her in any way?

A I said to her that I was going to go in and talk to Robert Pinter again and see if I could persuade him not to take me off the job.

Q Did you go in and speak with Robert Pinter that day?

A Yes.

Q Where did you speak with Robert Pinter the second time?

A Again in Mr. Pinter, Sr.'s office.

Q Was anyone else present?

A Mr. Jacoby.

Q If you recall, will you tell us what you said to Robert Pinter at that time and what he said to you, if anything?

A I asked him why he was taking me off my job as the on-hand clerk and he told me that I couldn't be trusted with the telephone.

And again I asked him, couldn't you warn a person and then look ahead to see if they have stopped and I didn't see any point in going back on the surveys.

I asked him if he had any complaints with the work I had done as an on-hand clerk and he said, no, you have done an excellent job.

He spoke to me about the length of the calls that I had made and I told him that part of the reason some of those calls were as long as they were is we have a system on our phones, if you have another call while you are on a call you hear a beep and if I got a camp on I would put my husband on hold and take this business call.

Q Camp on would be a beep?

A Yes.

As soon as you hang up that call will automatically then ring through or you can put the call that you are on on hold, push the botton and it will ring through.

Q So if you were on your phone and another call was coming through there was a system to notify you of that?

A Yes, andthe call would then -- once you heard that beep, would automatically ring through when you hung up.

So I told Bob that if I was on a personal call and I got this camp-on I would put that call on hold and I would take the business call.

And Bob said that he believed that I would do that but it didn't make any difference.

Then Bob Pinter started bringing up the incident about the hours changing and the fact that the girls felt harrassed and I advised him of our feelings on it, asfar as the way they notified us of the hour change.

They just put a notice up on the wall, and I advised him on our feelings about the meeting that his father had helt.

Q What did you tell him?

A Well, I told him that we were harrassed ov er it and they called the meeting to soothe us over and they only harrassed us further.

The hours had been changed from eight to five. They were eight to five. They changed them 8:30 to 5:30 and wher they hearfd we were harrassed they put a notice up saying they were going to call a meeting about this and the meeting would be held at 8:15 and please be prompt.

So we just -- we had just been switched to 8:30 and now we had to come in at 8:15 on our own time to hear this meeting and then the meeting didn't contain hardly anything about the hour change.

Q Do you recall if there was any further conversation concerning the telephone conversations at that time, with Mr. Pinter?

A No, I don't recall anything else.

Q Do you recall how the conversation ended?

A Well, yes.

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I asked him again was he absolutely going to take me off my job and he said absolutely.

Q By the way, you spoke about the change in hours.

For how long had you been working prior to the change, the eight to five hours?

A For approximately five years and seven months.

Q During that period did the warehousemen report and truck drivers report the same time as you did?

A Yes.

Q You also spoke about your telephone on your desk.

Did you ever have occasion while employed by the company to work the switchboard?

A Yes, I did.

Q Do you know how many incoming and outgoing balls could go through the switchboard at the same time?

A Well, they have seven different phone numbers for the company. I think there are four local lines, two city lines, an NJ line and they have one of those 800 numbers.

Q That would be aside from any direct numbers?

A Yes.

Q What time did you leave work on January 15th, do you remember?

A Roughly 6:00.

Q Did you have occasion to meet with your fellow employees again on January 15th following work?

A Yes.

Q And where did that meeting take place?

A The Sunset Bowling Lanes.

Q What time did that meeting start?

A 7, 7:00 p.m.

Q Who attended that meeting?

A The same girls that we had met with at lunch and the girls that signed the cards.

Q Were there any additional people there besides from those you already mentioned?

A Ted Spera was there.

Q Did Mr. Spera speak at the meeting?

A Yes, he did.

Q Were any more cards distributed?

A I don't believe so.

Q Did Mr. Spera say anything about the cards?

A Heagain told us that the union was now representing us.

Q Did he say anything else?

A He talked of union benefits and other things that the union could do for us as far as our grievances.

Q Did he say anything else about the cards?

A Not that I recall.

Q Did you report to work on January 16, 1975?

A Yes, I did.

Q What type of work were you assigned on that day?

A I w-as assigned as a floater.

Q Who assigned you as a floater?

A Catherine Turk.

Q And what did you say a floater does?

A Well, you substitute for girls that are on vacation or out sick and if nobody is out then you work directly with Catherine Turk doing various jobs.

Q What type of work did you do on the 16th of January?

A I did traces by mail.

I sent the TWX's and Telexes.

I did some filing.

Q Who, if anyone, performed your former duties as on-hand clerk that day?

A Rita Gianardo.

Q Did she ever, to your knowledge, do that work before?

A I believe she did once before when I was on vacation or possibly if I was out sick.

She had been the floater.

Q Oh, so you substituted jobs?

A Right.

Q Did you have occasion to speak with any management representatives on the 16th of January besides Catherine

Turk?

A There was a meeting called.

Q Well, when was the meeting called?

A Just after 8:30 in the morning.

Q Who called the meeting?

A Richard Jacoby.

Q Where did the meeting take place?

A In the main office downstairs.

Q Who was present at the meeting?

A All office personnel.

Q If you recall, will you tell us what Mr. Jacoby said during the meeting?

A He advised everybody that there was a telephone survey being conducted, that personal calls were not allowed, and that two girls had already been called in for it.

Q Did he mention the names of the two girls?

A I don't believe he did.

Q Did he in any way indicate what, if any, action would be taken because of personal telephone calls?

A No, I don't believe so.

Q How long did the meeting last?

A Roughly five minutes.

Q Now, you testified that you began work for the company in April of 1969.

Had you ever been warned about making personal calls prior to January 15th?

A No.

Q Had anybody ever said anything to you at all about making personal telephone calls?

A No.

Q Had you made personal telephone calls?

A Yes.

Q The list that you were shown on January 15th, after viewing it, did you find it to be fairly accurate regarding yourself?

A Yes.

Q To your knowledge did other employees make personal telephone calls?

A Yes.

Q Were there any other names on the list that you saw on January 15th?

A There were two other names that I sas, Vera Barber and Dolores Fletcher.

Q Did you work a full day on January 16th?

A Yes.

Q At what time did you leave?

A 5:30.

Q At 5:30 do -- did you directly leave the Pinter premises? On the 16th.

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A On the 16th?

Yes.

Q Where did you eat lunch on the 16th, if you remember?

A No, I don't recall.

Q Did you have occasion to eat with a group of employees on that day?

A It wasn't a meeting called between the girls but we prob ably did go out with a few of them.

Q When you returned to work from lunch on January 16th do you recall seeing any management representtives before you entered the building?

A Not that I recall.

Q Did you report to work on January 17th?

A Yes.

Q To what type of work were you assigned that day?

A Again I was assigned as a floater.

Q And did anything occur at work concerning your telephone conversations during your work hours on January 17th?

A No.

Q Did you have occasion to speak with any employees about unionization on January 17th during working hours?

A Probably.

Q But you don't recall specifically?

A I don't recall any specific conversation.

Q What time did you leave work on January 17th?

A 5:30.

Q And punching out did you leave the company premises?

A No.

Q What did you do?

A Waited in the parking lot.

Q With whom did you wait, if anyone?

A I was with Vera Barber, Charlotte Destefanis and Joanne Verderome.

Q And for how long did you remain in the company parking lot?

A Approximately a half hour.

Q Will you tell us what took place during that half hour?

A Well, we wre waiting for Lee Sinclair to come in.

As we were waiting in Vera's car a car pulled in and we all thought it was Lee Sinclair.

Vera got out and went over to the car to speak to them.

Q Where were you in relation to Vera at that time?

A Maybe 25, 30 feet away.

Q In front of her or behind her or on the side of her?

A A little bit to the side and behind her.

Q Which side?

A Depends on which way she was facing.

Q Which way was she facing? Was she facing towards you or away?

A Away from me. I was to her right.

Q Did you hear the conversation which took place between Vera and whoever pulled up in the car?

A No.

Q Did you see who pulled in?

A It was Alberta Nash.

Q During that period of time did you see any representatives of management?

A Yes.

Q Who did you see?

A Mr. Pinter, Sr.

Q When did you first see Mr. Pinter, Sr.?
Where was he when you saw him?

A He came out of the front office door.

Q Did you see him come out?

A Yes.

Q What did he do?

A He got into his car, started to pull out, stopped and said something.

Q Who did he stop at or where did he stop?

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A He stopped by Vera and Alberta.

Q Did you hear what he said?

A No.

Q What did he do after he stopped thatyou could see?

A Started to pull away, looked in his mirror, made a U turn, parked his car again and went back into the office.

Q Where were you standing with respect to Mr. Pinter's car?

A In distance you mean?

Q Were you in front of it or behind it?

A I was on the side of his car.

Q Which side, the driver's side or the passenger's side?

A No, the passenger's side.

Q And were you in front of his car or behind it on the passenger side?

Were you facing the front of his car or the back of his car?

A I was facing the side of his car.

JUDGE JIES: Mr. Weinrich, said something about where you were standing.

Were you standing at the time?

THE WITNESS: No, sir, I was in Vera Barber's car.

JUDGE RIES: You were inside Vera Barber's car?

THE WITNESS: Yes.

MR. BURSTEIN: Your Honor, I just made a note on that because Vera had testified that she was in the car.

Q What did you do after you observed Mr. Pinter return to the office?

A I got back into my own car with Charlotte Destefanis and started to leave theparking lot.

Q Did you speak with anyone before leaving the parking lot?

A Yes, I spoke with Lee Sinclair.

Q Who?

A Lee Sinclair.

Q Where did you speak with Lee Sinclair?

A It was in the parking lot. I was on my way out and she was on her way in.

Q Did you observe Mr. Pinter come out of the office again?

A No.

Q Did you return to the Pinter premises again on January 17th?

A Yes.

Q About what time?

A Roughly I think it was just before 11.

Q 11 p.m.?

A Pm.

Q Who did you return with?

A Vera Barber, my husband and John Barber.

Q What did you do?

Did you go into the premises?

A We were just off the side of the driveway leading up to the front gate.

Q Is there somebody in the gate house at night?

A Yes.

Q Didyou recognize who was in the gate house that night?

A No, I didn't.

Q Whatdid you do outside of thegate?

A We waited for some of the night women to start coming out of work.

Q Did you see any of the night women that evening?

A Yes.

Q Who did you see?

A I saw Carol Verci pulling out.

There was another car which I don't know who was in it and I saw Lee Sinclair.

Q Did you observe any management representatives?

A No, not that I recall.

Q Did you work on Saturdays and Sundays at all?

A No.

Q During the weekend of January 18, 1975, did you receive any communication from Pinter Bros."

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A Yes, I did.

Q What didyou receive?

A I received a telegram.

Q When did you receive this telegram?

A Around 11 a.m.

Q On what day?

A Saturday.

Q January 18th?

A Yes.

MR. WEINRICH: Mark that as General Counsel's Exhibit 6 for identification.

(Document referred to marked General Counsels Exhibit 6 for identification.)

Q I showyou General Counsel's Exhibit 6 for identification and ask you if you can tell us what that is.

A This is the telegram that I received on January 18th.

Q Was that delivered to your home or did you pick it up?

A It was delivered to my home.

Q To your home?

A Yes.

MR. WEINRICH: I ask that General Counsel's 6 be admitted into evidence.

JUDGE RIES: Received.

(General Counsel's Exhibit 6 for identification was received in evidence.)

MR. WEINRICH: Your Honor, yesterday we entered into a certain stipulation with respect to a telgram that was sent to Vera Barber concerning the time that appeared on the telegram and the time that the telegram was sent by respondent's representatives.

If Mr. Burstein concurs I see no reason why we can't do the same thing with this telegram.

I assume the time is it same and I assume it was sent at the same time.

JUDGE RIES: Is that agreeable?

MR.BURSTEIN: That's agreeable.

Q What action did you take after receiving the telegram on January 18th?

A Iphoned Vera Barber to see if she had received a telegram.

Q Had she at that time?

A No.

Q Did you take any other action?

A We contacted Ted Spera, notified him and he arranged for us to meet with Whitey Schneir in Bellrose.

Q Did you meet with Mr. Schneir?

A Yes.

Q Didyou have occasion to arrange another union meeting

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that weekend?

A Yes.

Q When wasthat meeting to be shceduled for?

A Monday Morning, Monday, the 20th, before work.

Q Did you have occasion to contact any of your fellow employees that weekend?

A Yes.

We called most -- we called them all to tell them to attend that meeting.

Q Did you tell them anything else?

A I told them that I was fired.

Q Did you tell them anything concerning Vera?

A That she had gotten a notice of a telegram but she hadn't gotten the telegram.

Q Did you attend the meeting on the Monday, the 20th?

A Yes.

Q And where was that meeting held?

A At the Deer Park Diner.

Q Who at tended that meeting?

How many employees attended?

A I believe there were 18 or 19.

Q And who spoke at the meeting?

A Whitey Schneir.

Q What do you recall Mr. Schneir saying at that meeting?

A That he was going in to speak with Mr. Pinter that morning.

And he talked with -- he talkedabout union benefits, raises, our grievances.

Q Were you scheduled to work on January 20th?

A No, I wasn't.

Q Why not?

But for your termination would you hve been scheduled to work?

A No.

Q Why weren't you?

A That was a scheduled vacation week for me.

Q And how far in advance had you scheduled that vacation?

A Maybe three months.

Q Did you go to Pinter's premises on the morning of January 20th?

A Yes.

Q Did you speak with any representtives of management that time?

A Yes.

Q With whom did you speak?

A First I spoke to Mr. Pinter, Sr.

Q Where did that conversation take place?

A In the doorway of the secretary's office.

Q Was anyone else present?

A Joan Barry, his secretary.

Q If you recall, will you tell us what you said to Mr. Pinter, Sr. and what he said to you, if anything?

A I asked him what this telegram I received was all about.

And he said that -- he said, that's right, business is slow, we no longer have any use for you.

So I asked him then why did the telegram state that I had been terminated for violation of company policy.

He said he didn't know because Bob Pinter sent the telegram and I should go upstairs and ask him.

Q Did he say anything else?

A Not that I recall.

Q What did you do following your conversation with Mr. Pinter, Sr.?

A I went upstairs to talk to Bob Pinter.

Q Where did the conversation with Bob Pinter take place?

A On the half level which had been my office or by the dispatcher's desks.

Q Was anyone else present during that conversation?

A The dispatchers were all at their desks.

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Q What did Robert Pinter say to you, if anything, during that converstion, and what did you say to him?

A Well, I asked him about the telegram and he said, that's right, because of personal phone calls.

I said, I thought you were waiting for the other surveys, and he said he didn't have to wait for anything.

And then I asked him that if I was fired for personal calls why did his father just tell me two minutes before that I was laid off because business was slow.

Bob said, regardless of the reason, you are fired, so get off the premises.

Q Did you say anything else?

A I asked him for my two weeks vacation pay and my one week back pay.

Q What did he say?

A He said, you'll get it when we give it to you.

Q What did you do then?

A I went downstairs, Mr. Pinter, Sr, was standing at the bottom of the stairs and I asked him for my money.

Q What did he say, if anything?

A He started to tell me to go upstairs to the bookkeeping office and at that time Bob Pinter came down the stairs and said to his father, never mind, she'll get it when we give it to her.

So Mr. Pinter, Sr. turned to me and said, I'm sorry, we don't have it right now.

Q What did you say, if anything?

A I told him that I had been working there for six years and I knew the bookkeeper could make me out three checks right now.

Q Did anybody else say anything?

A Bob Pinter then said, don't worry about your money, we'll mail it to you.

Q What did you do then?

A I left the premises.

I went -- I encountered the other three girls in the parking lot.

Q Which three girls?

A Vera Barber, Debby Gulbrandsen and Jane Healy.

Q Did you have a conversation with them?

A Yes.

Q Do you know if Jane Healy and Bebby Gulbrandsen had reported to work as yet as of that time?

A Yes, they did.

Q Did you ever have occasion to see Mr. Schneir at that time?

A I didn't see him, no.

Q Did you have any further conversations with either of the Pinters that morning?

A Not that I recall.

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Q Since January20, 1975, have you received any other communication from Pinter Bros.?

A Since January 20ty?

Q Well, since the last day you reported to work.

A I received my three weeks' pay.

Q Have you been offered your job back?

A No.

Q Did you return to the Pinter Bros. premises after January 20, 1975?

A Once.

Q When was that?

For what purpose did you return?

A Only to meet the girls for lunch.

I didn't go into the office. I met them in the parking lot.

Q Did you vote in the NLRB election held on March 26, 1975?

A No.

Q Did you attempt to vote in that election?

A Yes.

Q Did you go to the Pinter premises?

A Yes, we drove up to the gate.

Q Who were you with when you drove up to the gate?

A Vera Barberr, Jane Healy and Debby Gulbrandsen.

Q And what happened?

Who was driving?

A Vera.

Q What happened as you approached the gate?

A The gate was closed and it opened up enough for Bob Pinter to walk out.

He came through and he went over to Vera's window and he said, you are on private property, turn the car around and get off.

Q Did you say anything to Mr. Pinter?

A No.

Q Did you hear Vera Barber sayanything to Mr. Pinter?

A Yes.

Q What did she say?

A She told him we had all come to vote.

Q Did Mr. Pinter respond?

A He said they weren't going to let us in.

Q How close was Mr. Pinter to you?

A Wide as the car. Maybe three feet.

Q Was anyone else prsent?

A Warran Mangan, Whitey Schnir, Jack -- another union delegate. I don't know his last name.

Q Did anyone else speak with Mr. Pinter?

A Warran Mangan did.

Q Did you hear what he said?

A Yes.

Q What did Mr. Mangan say?

A He asked Bob Pinter if he recognized the four of us.

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Q Did Mr. Pinter respond?

A He said yes, he did.

Q Was anything else said?

A Not that I recall.

Q At what time did this occur?

A I believe it was 6:55 p.m.

Q How long did the incident take at the gate?
Or, how much time expired between the time that you pulled up to the time that you left?

A Maybe three or fourminutes.

Q During the course of your employment with Pinter Bros, had you ever been disciplined in any way?

A No.

Q Had you ever been complimented upon your work?

A Yes.

MR. WEINRICH: I have no further questions.

JUDGE RIES: Mr. Mangan.

BY MR. MANGAN:

Q The cards, Bea, that you referred to as receiving from Ted Spera, did you give those cards to the girls who attended the January 15th meeting?

A I did not, no.

Q Were they given to the girls by anybody in your presence?

A Yes.

did you discuss her testimony?

A No.

Q You have testified that you worked in the on-hand delivery or on-hand docket section of Pinter, is that correct?

A Yes.

Q And I think you explained that on-hand bills reflected goods which either couldn't be delivered because of the proper address or the consignee's place of business was closed or some other reason beyond the control of the deiver, is that right?

A Yes.

Q I take it that there is some relationship between the volume of freight on-hand and the total volume of freight which the company handles?

I mean, as the volume of tradings go up there tends to be more freight on hand?

MR. MANGAN: Objection to the form.

JUDGE RIES: Overruled.

You can answer that question if you know.

A Usually.

Q And would you agree with Mrs. Barber that between October of '74 and January 17, 1975 there was a rather substantial decline in the volume of business of Pinter?

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A Yes.

Q And you would agree that drivers were not getting the volume of work they previously enjoyed?

Some were on shape and they tried to --

MR. MANGAN: Objection.

I don't think there's been any testimony about on shape.

I know Mr. Burstein has referred to shape on a number ov occasions but there has been no testimony drivers were on shape.

JUDGE RIES: He is asking.

MR. BURSTEIN: I'm asking if she knows.

A I don't know.

Q But do you know that the volume of office work declined during the period because of the lesser business the company enjoyed?

A My work did.

Q I'm sorry?

A My work did.

Q Did or did not?

A Did.

Q You woudln't be able to say about the others?

A No, I don't know.

Q You didn't watch what they were doing?

A I didn't usually find out what other people were

Q What did you look for?

A My name was written next to certain numbers.

Q Yes.

A And I told Bob Pinter, yes, I had made those calls.

Q How many calls were there?

That was my question, that you saw with your name next to the calls.

A Maybe four or five.

Q Four or five?

A Yes.

Q And were those calls of durations exceeding five minutes?

A I didn't look at the times.

Q Well, did you note whether the survey indicated that these were calls in excess of five minutes?

A No, I didn't notice.

Q Well, did Mr. Pinter tell you that the only items which were recorded on the survey were calls which exceeded in duration five minutes?

A Mr. Pinter said he was only interested in the calls that exceeded five minutes.

Q Did he tell you that he had recorded calls that you made of less than five minutes?

A I don't recall.

Q Well, did you make calls of less than five minutes during the month of November?

A Probably.

Q In addition, you made calls in excess of five minutes in November?

A Yes.

Q But you don't recall how many calls you saw on the survey sheet?

A No.

Q There might have been more than two?

A The number of calls or the numbers that were called?

Q The number of calls you made not numbers, the number of calls you made, there may have been only two telephone numbers but the number of calls you made tothose numbers?

JUDGE RIES: She's given us that number, four or five.

MR. BURSTEIN: Let her testify tothat.

JUDGE RIES: She gave you an estimate of four to five.

A Four or five with my name next to them.

MR. BURSTEIN: Yes, okay.

Q Now, would you recognize the number 842-1122?

A Yes.

Q Is that a liquor store that you called?

A Yes.

MR. BURSTEIN: I want to mark as an exhibit a two-page sheet bearing the legend "calls over five minutes."

(Document referred tomarked Employer's Exhibit 1 for identification.)

Q I show you a two-page document which has now been marked Employer's Exhibit 1 for identification.

I ask you whether this was the survey that Mr. Bob Pinter showed you.

A I don't recall ever having seen this.

Q Well, will you look at that and tell the administrative law judge how many of those calls you yourself --

MR. MANGAN: Objection.

MR. WEINRICH: Objection.

MR. MANGAN: She said she never saw this and this was known to her as the survey that was shown to her on January 15th.

JUDGE RIES: Subject to connection I will allow her to identify which of those calls might have been calls she made.

MR. MANGAN: Mr. Ries, your Honor, there is a problem here.

Now, first of all, he offers this to the witness as the document that was shown to her on January 15th.

If it is not the document that was shown to her on January 15th itis -- it's got no relevancy to this proceeding and whether or not she recognized the numbers

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has no bearing in this proceeding.

MR. BURSTEIN: That is the most ridiculous, absurd objection.

I can identify anything if it refreshes recollection.

JUDGE RIES: May I say that I will not accept an offer into evidence of this document.

However --

MR. MANGAN: Let's assume she recognizes numbers on the sheet and if the sheet is not the survey that was shown it has no bearing in this proceeding.

MR. BURSTEIN: Please stop priming the witness.

MR. MANGAN: If she never saw this document --

JUDGE RIES: Mr. Mangan, sit down, please.

MR. MANGAN: I happen to listen standing up.

JUDGE RIES: I would prefer you to sit down.

MR. MANGAN: I prefer standing up.

Can you just tell me what the response is?

JUDGE RIES: The response is sit down, Mr. Mangan.

You don't want to sit down?

MR. MANGAN: I will sit down but why are you putting it that way?

If you have a response, I'm maming an objection.

JUDGE RIES: I understand that and I'm asking you to sit down and you will receive a response.

I assume that there will come a time when Mr.

Burstein will offer this document through an authenticating witness at which point I will, I may accept the document into evidence.

I don't see any point in recalling Mrs. Pagliarulo at that time to identify numbers which may be related to her and so I will at this point allow her to identify any numbers on that document which she may recognize as numbers she might have called.

Q Does that sheet refresh your recollection as to the numbers which you may have called in November of 1974?

A I recgonze two phone numbers that I called.

Q How many telephone calls?

A Total of ten.

Q Ten?

How many?

A Ten.

Now, I only get eight.

Q Count them again.

A Ten.

MR. BURSTEIN: This was only marked for identification.

We will offer it through another witness.

Q Wereyou here when Mrs. Barber testified that she had received approximately three warnings about excessive use of telephones from --

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A Yes, I was here.

Q Had you been warned previously about your use of the telephone?

A No, sir.

Q You also said that when you met with Mr. Jacoby and Mr. Robert Pinter you stated to them in words or in substance, why can't you give a warning?

Meaning instead of assigning me to another job -- was that your statement?

A Yes.

Q Now, isn't it a fact that on -- during this discussion with Robert Pinter or Jacoby any question was raised about your union activity?

Isn't that the truth?

A Yes.

Q Isn't it the truth that between the date you first became interested in a union in October or November 1974 and the date of termination of your employment, nothing was ever said to you about your union activity?

A That's right.

Q And nobody ever followed you tothemeetings?

A Not that I know of.

Q You never heard of a supervisor or a managerial employee attending the meetings or splying on the meetings?

A Not that I know of.

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Q And you never heard of the Pinters questioning anybody about the meetings that were attended up to the 15th?

A Not that I know of.

Q And since you were soliciting people to join the union actively and openly during office hours, you weren't worried about thatpart of it, that you would get caught or anything, otherwise you would not have been doing that?

A As far as what, sir?

Q Talking to people to join the union during office hours, working hours.

A I wasn't worried about that.

Q Being found out?

A Yes, we were.

Q Well, if you were worried about finding out but you did feel free to speak to girls in the office during working hours, didn'tyou?

A Yes.

Q Nobody putany restraints on you, did they?

A No.

Q No. You also testified I believe to a meeting with Mr. Jacoby on January 16th in which he spoke about the telephone survey and that two girls had been called in for a number of calls in excess of five minutes,

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A A hearing?

Q Yes.

On the representation case. If you found out.

A : What do you mean by on the representation case? As far as them not letting us vote?

MR. WEINRICH: I will withdraw that question.

Q You testified both on direct and on cross-examination that cards were given out on January 15, 1975 at the Deer Park Restaurant.

A That's right.

Q At that time ane during that meeting in any of your conversations do you recall mentioning an election?

A No, sir.

Q Did you distribute any cards personally after that time to any employees?

A No, sir.

MR. BURSTEIN: After January 15th?

MR. WEINRICH: After January 15th.

A I personally did not distribute any cards.

Q Did you speak to any employees concerning their signing the cards after January 15th?

A Yes.

Q Who did you speak with?

A Rose Henn.

Q Do you recall what if anything you told Rose Henn

MR. WEINRICH: It is my recollection of the testimony, your Honor, this wa a matter raised on cross-examination and I'm asking the witness to explain it.

JUDGE RIES: Well, I will allow it.

I can't recall the testimony.

Go ahead.

Q During the week ending January 17, 1975, did you observe anybody else looking at you from the office windows or at any other time?

A On January 10th when we came back from the lunch meeting at the Sizzler that we had had we were sitting in the lobby and Mr. Jacoby came in.

He opened up the door and he said -- we were still on our lunch hour -- but he said, the door is not locked, girls, you can come in.

MR. WEINRICH: Could I see the document that was shown to the witness and marked as Employer's Exhibit 1, please?

Q I show you Employer's Exhibit 1 marked for identification and ask you if the ten numbers there are numbers that you called during that period of time or the numbers that you may have called during that period of time?

MR. MANGAN: Objection.

No testify about ten numbers called.

A I don't recall.

Q You don't recall?

Do you recall if he mentioned the subject of lay-offs at all?

A Well, he said he hasn't laid off in the past and that he didn't plan on doing it this year either.

If anything he would make it a four-day work week.

Q Did there come a time when you attended a union meeting?

A Yes.

Q When was that?

A Lunch time, the 15th.

Q The 15th of what month?

A January 15th.

Q What year?

A No, no, I'm sorry. I'm confused.

December 15th.

Q Was it before or after you were terminated?

A Before.

Q How long before?

A I know the date was December 15th.

Q When were you terminated?

A January. On a Monday. I'm not too good with dates.

Q Let me ask you this:

At the meeting you attended were you given anything?

A Just speaking about the union and how there was -- and the benefits that we would get and how it would help us.

Q What time did you leave the diner?

A Before 8:30, about twenty after, twenty-five after.

Q Did you report to work that morning?

A Yes.

Q Do you recall if you saw any of your fellow employees before reporting to work?

A I met Jayne outside the door.

Q Jayne who?

A Healy.

Q Did you have a conversation with her?

A Yes.

She told me she was laid off.

Q What did you do after speaking to Jayne?

A I went inside myself and my time card wasn't in the slot and Mr. Pinter, Sr. and Mr. Jacoby was standing there and called me over and told me that work was slow and that I wouldn't be needed any more.

JUDGE RIES: Who said that to you?

THE WITNESS: Mr. Pinter, Sr.

Q And did Mr. Jacoby say anything.

A No. He just stood there.

Q What did you say, if anything?

A I just said, that's all, that's it, and he said, I'm sorry you are being laid off.

And I left.

Q And what did you do after that?

A I met Whitey and Ted Spera in the lobby with Jayne. And they took our numbers and --

Q Did you have any further conversation with management personnel?

A Not myself.

Q You weren't present when any conversations took place?

A Well, Mr. Pinter, Sr. came out and told us not to hold any meetings in thelobby and told us to leave.

Q Who was present at that time?

A Whitey, Ted Spera, Jayne, myself, Vera and Mr. Pinter, Sr.

Q Who did you sit next to at work?

A A wall, and Beatrice sat in front of me.

Q Beatrice who testified here today?

A Yes.

Q Were you given any prior warning that you would be laid off?

A No.

Q Did the company have any slow periods when work was slow?

A Well, it was slowing up prior to the meeting that Mr. Pinter had.

But I don't really know.

I was only there a few months so I don't really know what slow really was.

Q Did you attend a meeting where personal telephones were discussed?

A Yes.

Q When did that take place?

A The 16th, I believe.

In the lobbydownstairs on the first floor with Mr. Jacoby.

Q What did Mr. Jacoby say at that time?

A He just warned us that there were surveys being taken on the personal telephone calls and that two girls were being held and they were looking further into the surveys to see what they had there.

Q Were you ever spoken to about personal phone calls before?

A No.

Q Did you ever make any personal telephone calls?

A Yes.

Q Were you called in about that prior to your being laid off?

A No.

Q Now, were there any employees hired after you were hired?

A They had Tempo people there, yes.

Q What are Tempo people?

A They hire people from an agency to come in to work for them.

If some girls had been out ill for a number of times they would hire Tempo girls and there was a girl hired before me as a Tempo.

Q What were their names, do you know?

A Sharon. I don't recall her last name. I just knew her as Sharon.

Q Any other Tempo girls that you know the names of?

A I think Sharon was before me.

I don't recall but there were others but I don't know if they were before me or after I came.

Q Were they working at the time you were laid off?

A Yes.

Q Do you recall if any other employees were hired after you were?

A Hired? I don't recall.

Q Do you recall if a file clerk was hired after you were?

A Oh, yes.

Q Who was that?

A Helen McDermott.

Q What type of work did she do?

A Filing bills.

Q Did you ever do any filing during the course of your employment?

A Yes.

Q Did you ever file bills?

A The same ones.

Q To your knowledge was she laid off on January 20th?

A No.

Q Haveyou spoken to her?

A Yes.

Q Is she still working?

A No.

Q When was she laid off, if you know?

A A few weeks after. I don't recall the date.

Q During the period of your employment were you ever criticized about your work?

A No.

Q Ever disciplined in any way?

A Yes.

Q For what?

A Talking, laughing, whatever.

Q By whom?

A By Bill Hunt if anyone. He was more or less up there to control us.

He was a rate man. Catherine Turk at times.

Q Were you ever threatened with discharge?

A No.

Q On Friday, January 17th did you have enough work to keep you busy all day?

A Yes.

Q Were you given any notices over the weekend of January 18th and 19th of your lay-off?

A No.

Q Was anything said to you on January 17th before you left?

A Nothing.

Q Did you vote in the NLRB election held on March 26, 1975?

A No.

Q Did you go to vote in that election?

A Yes.

Q Who did you go to vote with?

A Vera, Beatrice, Jayne, in Vera's car.

Q About what timedid you arrive at Pinter's premises?

A Around ten to seven.

Q And what happened when you arrived?

A We approached the gate and Warren and a few other men were there and Bobby was behind the gate with a few other men.

Q Bobby who?

A Pinter and he came out and he told us we couldn't come in and for Vera to turn her car around and get out.

Q Did anybody else say anything?

A In the car or outside?

Q Any of the people outside the car.

A Warren said to Bobby if he recognized us and if he knew who we were and he wasn't letting us in to vote and he said, that's what I was told, I'm not letting them in.

Q Who said that?

A Robert Pinter.

Q Did you say anything?

A Well, I started to say something but I was cut off by somebody else in the car, but I don't think he heard it.

I was going to say if I came in by myself would I be able to vote but I didn't get it out.

Q Did anybody else in the car say anything?

A I don't recall.

MR. WEINRICH: I have no further questions.

EXAMINATION BY

MR. MANGAN:

Q Debra, do you recall when you gave a statement to the NLRB?

A Yes.

JUDGE RIES: She gave an affirmative response to the question of when Helen McDermott was laid off.

MR. MANGAN: That's right.

JUDGE RIES: Now, it is not that she can't remember anything.

MR. MANGAN: Well, if there is a document that is available that can refresh her recollection and can give her a better idea of what exactly transpired, it is not a matter of impeaching the witness' credibility.

It is a matter of bringing the fact to the witness that which she has described at some period after her termination but before this hearing.

JUDGE RIES: Well, I think here that it is of such dubious value that I don't know that it is worth pursuing, Mr. Mangan.

MR. MANGAN: Okay.

BY MR. MANGAN:

Q Debra, who did you recognize to be the boss of Pinter Bros. while you were employed there?

A Mr. Pinter, Sr. owned the company.

Q When were you hired?

A August 19, 1974.

Q During the period betweeh when you were hired and laid off on January 20, 1975 were there others hired in the clerical staff?

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A Yes.

Q Were they hired to do work of a kind that you had performed or in the same department that you were working?

A Yes.

Q In what classifications were they hired to work?

A Well, Helen McDermott was a file clerk.

Q And you had performed the same work as Helen McDermott?

A Yes.

And the Tempo girl that was hired to -- worked in billing.

She filed bills and pulled bills.

I had done that also at previous times.

Q The Tempo girl you are referring to that did billing, is that Sharon?

A Yes.

Q Was Sharon terminated or laid off on January 20, 1975?

A No.

Q Was Helen McDermott terminated on January 20, 1975?

A No.

Q When you gave the statement to a representative of the regional director was Helen McDermott still employed by Pinter Bros.?

A Yes, I believe.

Q Did Mr. Joseph Pinter, Sr. ever assign work toyou and supervise you?

A Not that I recall.

Q Who is Mr. Robert Pinter?

A Sitting next to you.

Q Who is he in the company? What is his title?

A President, I believe.

Q Is he one of your bosses?

A Yes, he is.

He also gave me work at times.

Q Did there come a time after Christmas in 1974 when you had no work at all and you asked Bill Hunt to give you some rate work?

A Yes.

Q And this is -- business had slowed up right after Christmas, had they not?

A Yes, but I had work to do.

Q I understand.

A Yes.

Q But you didn't have work to do as clerk-typist, that's why you asked Mr. Hunt to give you some work?

A Right.

Q I think you said that there was some discussion about unionization in December 1974 and some of the discussions took place at the desk during working hours.

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A Yes.

Q And you did that I think you said during working hours, sometimes on breaks which took place in the building and sometimes afterworking hours?

A Correct.

Q Did anybody ever talk to you or say to you that you shouldn't talk about unions?

A No.

MR. BURSTEIN: Nothing further.

REDIRECT EXAMINATION

BY MR. WEINRICH:

Q Before you were laid off were you given the opportunity in -- or asked by anybody frommanagement if you were willing to work in a different job classification at a lesser rate of pay?

MR. BURSTEIN: Objection to the form.

It isa leading question, improper and not directed to the cross.

JUDGE RIES: I sustain the objection.

She has testified to the discharge interview.

Q Up until the time of your lay-off on January 20th, 1975, how many days a week wereyou required to work?

A Five.

MR. WEINRICH: Nothing further.

BY MR. MANGAN:

Q Mr. Burstein asked you about the computer operation. I believe you testified that was on the third floor?

A Yes.

Q When was that computer operation commenced?

A I don't understand.

Q When did they first bring a computer in?

A Bring in the computer?
I don't remember the month.

Q Do you remember whether it was before you were hired or after?

A After.

Q During the period between the date that you were hired and your lay-off did anybody in an official capacity at Pinter Bros. ever offer you an opportunity to perform that work?

MR. BURSTEIN: Objection.

JUDGE RIES: Overruled.

A No.

Q Between the date of hire and the date of termination, did anybody from Pinter Bros. in an official capacity offer you an opportunity to perform any other work other than that which you performed?

A Yes.

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Q What was that?.

A The other work I did besides what I testified to?

O Yes, other thanwhat you testified to that you did perform during that period.

A Oh, no, I'm sorry.

I helped other people out that were -- that was all.

They didn't ask me to do that job permanently.

MR. MANGAN: That's all.

I have no further questions.

RECROSS-EXAMINATION

BY MR. BURSTEIN:

Q Mr. Mangan asked you about an opportunity to do computer work.

Tell us what computer work is.

A I have never worked a computer.

Q You know nothing about a computer?

A No.

Q You never worked on a computer?

A No.

Q Or with anybody else preparing cards for you or putting materials into a computer?

A No.

MR. BIRSTEIN: That's all.

MR. WEINRICH: I have one further question.

REDIRECT EXAMINATION

BY MR. WEINRICH:

Q While employed at Pinter Bros. were you ever offered the opportunity of training in any other skills other than you possessed?

A I was never offered, but people were showing me other things to do and teaching me the job, yes.

Q What other things?

A Up in billing I had worked with bills, subraacting amounts that were due and then sending in bills to these people.

Filing bills that the accounts had been using.

They were showing me how to do that.

And working in interline occasionally.

I would work with the girl there. She showed me what to do.

Those were just some of the things.

Q Do you know if the company trained any of its employees to work on the computer?

A I don't know.

They had special men comein, I know.

Q Do you know if the company employed people other than you described as Tempo employees to work on the computer?

A I'm sorry, I don't understand.

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A Yes, right next to his.

Q Explain who you sat next to.

A Bob Pinter.

Q Was his office separated by a partition?

A No.

Q About how far away from Mr. Pinter's desk was your desk?

A About here to that desk.

Q Where I'm standing?

A Yes.

From -- if my desk was over here, his would be right here, so everyone could walk through. There was an aisle there.

Q About six feet?

A Yes.

Q Did Mr. Pinter spend -- well, how much time during the day would Mr. Pinter spend at his desk?

A Different days.

It was different times.

The majority of the time he was there.

Q Is it possible to give any sort of average?

A Some days he wasn't there at all.

Q How many other employees were in the same area that Mr. Pinter's desk was located?

A Seven or eoght.

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A I walked into the office.

I saw Mr. Pinter and Mr. Jacoby there.

Mr. Pinter was laughing. I looked for my time card and it wasn't there.

I turned around and he motioned me over to him. He told me that business was slow, he no longer needed me to work there.

MR. MANGAN: Could we get a clarification of who "he" is.

THE WITNESS: I'm sorry.

Mr. Pinter, Sr.

Q Did Mr. Jacoby say anything?

A No.

O Do you recall if you said anything to Mr. Pinter, Sr. or to Mr. Jacoby?

A I just said all right.

And I left.

Q What did you do after leaving the building?

A I went out of the building, I was in the parking lot.

I talked to a few girls and --

Q Who?

A Well, I know I talked to Debra Gulbrandsen. I told her I was laid off.

Along with a few other girls, I don't recall which ones I spoke to.

And I walked back into the lobby and I saw Whitey there, Bea and Debbie and I walked in and we were talking standing around, talking, and Mr. Pinter came out and he said, these girls are no longer with us, I want -- Mr. Pinter, Sr., Joseph Pinter, Sr., and he said, these girls are no longer with us, to Whitey, I want them off my premises.

Q What did you do?

A I left.

Q Had you been given any warning that you would be laid off prior to January 20th?

A No.

Q At the time you were laid off, January 20, 1975 were any employees who were hired after you continued in the employ of the company?

A Yes.

Q Who?

A Sue Burier.

Q Wheredid she work?

A In the billing department.

Q What type of work did she do?

A Pulled bills, typed up statements.

Q Who else?

A Rita Genato.

Q What type of work did she do?

A She was floater.

Q Who else?

A Joanne Veerderome.

She worked with the claim manager in the claims department.

Rosalie Palasolo. She worked in the interline department.

Q Anybody else?

A I forgot how many I named.

Helen McDermott. She was a file clerk.

She did the same job I had done at one time.

Q Do you know when Helen McDermott was hired?

A Between July of 1974 and September. I believe she was.

Q The time you were laid off how many days a week did you work?

A Five.

Q On Friday, January 17, 1975, did you have sufficient work to keep you busy for eight hours a day?

A Yes, I always had work.

Q During the period of your employment has Pinter Bros. laid off any other employees for economic reasons?

A No.

Q Did the company have a traditional slow period?

Q And your supervisor was Miss Turk?

A Right.

Q1 You reported to her and to Mr. Jacoby?

A Yes.

Q Also to RobertPinter?

A [illegible].

Q Who is Robert Pinter?

A He is the president.

Q You testified that there was a Helen McDermott who was another file clerk who worked the same time you did.

A Yes.

Q Do you know whether she was laid off?

A After we were, she was.

Q Do you know of any replacements hired either for you or Helen McDermott?

A No.

Q You have no knowledge either way?

A No

Q You said your desk was close to Mr. Pinter's?

A Yes.

Q But you spent your time filing?

A Yes.

Q Where were the files?

A On my desk.

Q So you understood that by signing the cards, having them filed there would be a vote conducted by the NLRB?

A Right.

Q Was there any reason at any time up to the time of your lay-off that you learned or knew that anybody in the company had knowledge of your union sympathies or affiliation?

A No, I don't.

Q To the best of your knowledge no one in management knew about your union affiliation?

A They never told me.

To my knowledge, no.

Q I take it no supervisor ever quiered you about your membership or non-membership in the union?

A No.

Q And I take you never saw any company representative present at any of the meetings?

A No.

Q Never saw anybody watching people going out or coming to themeetings?

A No.

MR. BURSTEIN: No further questions.

REDIRECT EXAMINATION

BY MR. WEINRICH:

Q On the evening of January 15, 1975 when Mr. Sper

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Q Well, do you recall if he said anything else?

A Well, he told her that she wouldn't have anything to worry about as far as her phone calls.

Q Did he say why?

A No.

He was just -- seemed to be joking around and just sort of like tapped her on the back and jokingly laughed and said, "you have nothing to worry about."

Q Do you recall if Bob Pinter said anything else to Dolores Fletcher?

A Well, a few things was said but I couldn't hear the whole conversation he was talking rather low.

Q Do you recall if he said anything about the number of phone calls Dolores Fletcher had made?

MR. BURSTEIN: I suggest that the witness has now said that she has exhausted her recollection and now you are leading.

JUDGE RIES: I am not sure that a thorough enough effort has been made to exhaust the witness' recollection.

I wish you would try that, Mr. Weinrich.

MR. WEINRICH: Sure.

Q (By Mr. Weinrich) How long did the conversation take between Bob Pinter and Dolores Fletcher?

A A few minutes.

Q Other than what you have already testified to do why Bea and Vera were unhappy with -- at their jobs with the salaries that they were making.

There was talk about the union.

There was questions raised.

Someone raised the question that -- brought the point out that if a union was in that night people could bump day people as far as seniority wise.

Q Did Mr. Pinter or did any representative of management respond to that question that was raised?

A I think Mr. Pinter agreed to that fact, that, Mr. Joseph Pinter agreed that it could happen.

Q Do you recall Mr. Pinter saying anything else at the meeting?

A I know one of the employees, Bill Hunt, mentioned something about the fact that his pension would be less if a union came in.

Q Did Mr. Pinter, Sr. reply to Mr. Hunt's statement?

A I think he did.

I don't recall exactly what he said.

Q Do you recall if any other questions were asked of Mr. Pinter at the meeting?

A Rita, another co worker, had asked why everything was just pointed to Bea and Vera, and why Jane and Debbie were also laid off and also there was a question raised that there were still two tempo girls on the if an agreement could not be reached?

A   If an agreement could not be reached?

They mentioned something about that, there could be strikes.

Q   Do you recall if anything else was mentioned on that subject?

A   There could be a loss of jobs.

Q   Do you recall if anything else was mentioned on that subject?

A   No.

Q   Do you recall if the subject of lay offs was raised during that meeting?

MR. BURSTEIN: This is improper examination.

That isn't what I meant when you said you can identify a subject.

You are not identifying subject.

Lay offs, the subject of his saying to you if you joined the union, you get fired out of the place, the subject of whether or not we are going to give you reprisals, that's proper examination.

I object.

You can't merely because you use the talismanic word subject that doesn't mean that you have a right to probe this kind or this witness with those kinds of questions.

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join the union?

A No.

Q You had signed a card hadn't you?

A Yes, I had.

Q When did you sign your card?

A January 15th.

Q Janaury 15th?

A Yes.

Q Did you make a secret of the fact that you were a member of the union?

Did you conceal that from the other employees, did other employees know that you had signed an authorization card?

A Only the ones that had signed the cards with me knew about it.

Q How many people signed the cards?

A Offhand I can give you some names.

I don't know.

Q Approximately how many?

I don't want to tax your memory as to names.

A At least ten.

Q At least ten?

A Yes.

Q And there was talk around the office about the union, wasn't there, during working time?

A I'd have to say yes.

Q So that you might speak to other girls about the union, other girls might speak to you about the union during working time?

A I myself didn't speak during working hours about the union.

Q But you saw other girls doing that?

A I did maybe on my lunch hours and my breaks, you know,in the office.

Q But the others did speak during working hours?

A There was occasion when I had seen people talking.

Q Now, dispite the fact -- now, did there come a time when you advised the company that you were a member of the union?

A No, I never -- did I advise anyone that I was a member of the union?

Q You told the other girls you were?

A Just the girls that knew.

Q Were you ever threatened with firing or discharging or disciplined because you either said nothing about it or said something about the union?

A I personally?

Q Yes.

A No.

Q Many of the girls have their own automobiles and some work out car pools, don't they?

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A   Right, yes.

Q   Isn't it a fact that at the end of the working day it was quite usual for girls going either in the same direction to go to the parking lot and sit around and gab for a few minutes?

A   Right.

Q   That's not unusal?

A   No, it's not.

Q   That's been going on surely since the day you started to work for Pinter?

A   Right.

Q   So that the congregating in the parking lot was not an unsual thing that had anything to do with the union?

It was a practice you people had of meeting and talking after work for a few minutes in the parking lot?

A   Right.

Q   And from time to time you would see members of management going into the parking lot because they had cars there too didn't they?

A   Yes.

Q   It wasn't unusual for a member of management to go into the parking lot and to pick up his own car ro to talk to somebody in the car?

Was he standing near a Mustang car?

A I don't recall.

Pinter's car is not a Mustang.

He was crouched behind Santa's car when I saw him.

Q Was it a small car?

A It's a sports car.

I don't think it's a Mustang.

Q Well, I am sorry if it isn't a Mustang, but it's a sports car which is a small car, and did you note that Mr. Pinter was speaking to somebody in the car who was waiting to pick up his sister?

A No, he wasn't talking to anybody.

When we walked out into the parking lot when we were talking he was just crouching, -- crouched, squatting down by the car.

Q Was he in the back of the car?

A On the side of the car.

The cars are faced this way and here is the car and he was squatting down by the cars.

Q With relationship to that little sports car was he at the window of the car?

A The sports car isn't little it's the size of an average car.

Q In relation, just speaking of the sports car where was he standing?

it's a clerical employee says to Mr. Brown it's necessary for me to leave work early, is it your testimony he would not have the authority to grant that?

A No, I thought you meant as far as disciplinary matters.

He would probably have to check with Mr. Jacoby the general manager but I am sure his recommendation would be taken into consideration.

Q As to whether they would be permitted to have time off as opposed to disciplinary matters?

A Definitely.

Q Within his department with respect to the office employees, Mr. Brown, Mr. Lee Brown has the authority to transfer an office employee from one type of work to another type of work, doesn't he?

A Well, actually all the work is more or less split up.

I would say there are no specific jobs for certain people and that there are only two people in the office as you can understand.

Q But he does have the authority to tell Linda Schulz to stop working on a specific type of work and to assist Dolores Fletcher in doing another type of work, is that correct?

A Well, she wanted me to sign a card and I didn't want to sign a card.

Q Pardon me, now, did that --

MR. WEINRICH: I object and move to strike that too because it's not part of a conversation.

JUDGE RIES: The last part of a conversation, "I didn't want to sign a card," is stricken.

MR. BURSTEIN: Well, we will get to the conversation.

Q (By Mr. Burstein) Sometime prior to January 17th, before Vera was terminated, you did speak with her about the union?

A Right.

Q Is that correct.

A Yes.

Q Did she at anytime discuss with you the manner of signing an authorization card?

A She did.

Q How many times did she speak with you about that?

A Several times.

Q Did those conversations take place at Pinter Bros. during working hours?

A On the phone lots of times at my girlfriend's house.

Q Now, let's take the first time, to the best of your

Q Who gave you the card?

A She had given it to one of the girls and she had given it to me.

Q : Who was the girl again?

A Doris Bonadonna.

Q Did you have a conversation with Doris at the time she gave you the card?

A No, not really, I just asked her what do I do or sign.

I don't even remember it.

Q And in any event haven't you signed the card?

A Right.

Then you testified that sometime after that you spoke with Vera and you made a call from the lobby of Pinter, right?

A No, I called her before I signed the card.

Q You called her before?

A Yes.

Q Was there a discussion about voting during that conversation?

A You know I really don't remember.

That I don't remember.

Q Do you remember talking about voting to Vera at anytime either before or after you signed the card?

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A No, I just walked by and said, "hi," and walked away.

Q When?

MR. BURSTEIN: What was that?

A I just walked -- just waved my hand by the car it was about a minute of six and I had to rush in and punch in.

Q Upon entering the company premises did you have occasion to see any management representatives there?

A No.

Just Carlo was at the desk and Mr. Pinter was there.

Q Which Mr. Pinter was there?

A Joe Pinter, Sr.

Q He would be a management representative, wouldn't he?

A I guess so he is the owner.

Q Did you have a conversation with Mr. Pinter, Sr. at that time?

A No, he had been looking out and just asked me if anyone had approached me and I looked and said not just the girls said hello to me.

Q Did he ask you who had approached you?

A No, he didn't say who.

Q What did you answer?

or what Mr. Brown -- .

I withdraw that.

If you recall, will you tell us what Mr. Jacob said to Mr. Brown and what Mr. Brown said to Mr. Jacoby, if anything?

A Mr. Jacoby told Mr. Brown, I told the old man not to fire those two girls, but he said, no, because he doesn't want the Union in.

Q Did you hear Mr. Jacoby say anything else?

A No, sir, I did not.

Q Where were you when their conversation took place?

A I was walking through the lunchroom.

Q Did Mr. Jacoby make any reference to the specific people he was speaking of?

A No, he did not.

MR. WEINRICH: I have no further questions of the witness.

JUDGE RIES: Mr. Mangan?

MR. MANGAN: No questions.

MR. BURSTEIN: Can I see the statement?

(Whereupon, Mr. Weinrich hands the requested statement to Mr. Burstein.)

MR. BURSTEIN: Will you allow me a few minutes?

JUDGE RIES: Yes.

Did you also tell him about meetings held with other employees in the clerical department, concerning joining or not joining the Union?

MR. MANGAN: Objection.

Q Did you tell him that?

MR. MANGAN: Objection.

JUDGE RIES: Wait a minute.

I'll permit the question.

You can answer it.

A Would you repeat the question, please?

(Whereupon, the requested question was read back by the reporter.)

A Yes.

Q Did you tell him that, at no time, did you ever observe either a company official or a supervisor in the vicinity of any such meetings, or appearing to surveil the meetings?

MR. MANGAN: Objection.

JUDGE RIES: Overruled.

You can answer.

A Yes.

Q All right.

Did you also tell him that you had attended a meeting some two days before the election, at which time Mr. Pinter, Senior, spoke to the people who were

MR. MANGAN: Objection.

Leading.

JUDGE RIES: Sustained.

Q Can you tell the Board, or the Judge, whether there was any discussion at all concerning seniority, or job security?

A I can't recall, sir.

Q You don't recall anything else?

Did you discuss with the Board Agent anything concerning possible layoffs or strikes?

A Yes.

Q What did you tell the Board Agent about that?

A That -- Something about Mr. Pinter said that there could be possible -- possible layoffs, I believe.

I really can't recall too well, sir, but I --

Q What was it you recalled Mr. Pinter said, that there could be possible layoffs?

A Yes.

Q Strikes, all right.

JUDGE RIES: Did you have something else to add to that, Mrs. Lufker?

THE WITNESS: No, sir.

MR. BURSTEIN: Please mark for identification, the three page document headed, State of New York, County of Suffolk, now comes, Diane Lufker.

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JUDGE RIES: Was that a fellow employee?

THE WITNESS: Yes.

JUDGE RIES: Mr. Weinrich.

MR. BURSTEIN: May I pick up this point?

JUDGE RIES: Well, we'll go around again.

MR. BURSTEIN: Fine.

REDIRECT EXAMINATION

Q (By Mr. Weinrich) With which fellow employee did you discuss this statement that you overheard?

A Linda Casilli.

MR. BURSTEIN: Linda who?

THE WITNESS: Linda Casilli.

Q Is she somebody who worked in your department?

A She doesn't work in my department, no.

Q She worked for Pinter Bros., though?

A Yes.

Q Did you discuss the statement that you overheard with any other fellow employees?

A No.

Q During the examination that Mr. Burstein just subjected you to, do you recall him asking you questions concerning a pre-election meeting which you attended?

MR. BURSTEIN: I must object on the record. I don't subject witnesses to examination.

The object is to develop the facts.

The adversary procedures are not entirely applicable here. But I think you've overruled the objection, so --

Q Is it correct that that -- that at that meeting, Joseph Pinter, Sr., said that we don't need a Union?

A Yes.

Q Is it correct that he also said that his door was always open?

A Yes.

MR. BURSTEIN: You understand, I have a continuing objection.

JUDGE RIES: I understand.

Q (By Mr. Weinrich) Is it also correct that he stated that he pays good salaries, and that Unions make lots of promises, like politicians, which they can't keep?

A Yes.

Q Now, you testified concerning a question asked by Bill Hunt.

Bill Hunt is a fellow employee, is that correct?

A Yes.

Q And Mr. Hunt asked a question concerning his contributions to the company pension plan, is that

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Vera Barber at that time?

A Mr. Pinter, Sr., and Vera.

Q Were you present when that conversation took place?

A Yes, I was.

Q If you recall, will you tell us what Mr. Pinter, Sr., said to Vera and what Vera said to Mr. Pinter, Sr., if anything?

A Mr. Pinter said Vera, what are you doing here, didn't you get your letter?

And she said what letter.

And he said the old pink slip. We don't need you anymore.

Q What did Vera say, if anything?

A She was shocked. She --

MR. BURSTEIN: I object she was shocked. Not responsive.

JUDGE RIES: Sustained.

Q What did she say?

A She was looking for her card at one point, and when he said to her, what are you doing here, didn't you get your letter, she said what letter.

Q Did Mr. Pinter say anything else, if you recall?

A I don't recall.

Q Do you recall if Vera said anything after

Mr. Pinter, as you testified, said we don't need you anymore?

A No, I don't recall.

Q The conversation just ended at that point?

A I walked away. I didn't remain much longer.

Q Do you recall if prior to the election held on March the 26th, 1975, you attended any meetings at which representatives of management spoke?

A Yes, I did.

Q When was this meeting held?

A Two days before the election.

Q Was there one meeting or more than one meeting?

A Before the election?

Q Before the election.

A Regarding the election?

Q With reference to the upcoming election.

A There was one meeting of the day office clericals, and a meeting of the night office clericals.

Q Which meeting did you attend?

A The day office clericals.

Q And at what time of day was that meeting held?

A 8:30 in the morning.

Q Who was present at that meeting?

A Mr. Pinter, Sr., Mr. Jacoby, Bob Pinter, Catherine Turk and most of the day office clericals.

Q Which representative or which representatives of management spoke at that meeting?

A Mr. Pinter, Sr., conducted the meeting.

Q If you recall, will you tell us what Mr. Pinter, Sr., said at that meeting?

A He started by saying that he thought he had a very good company, with good working conditions and high pay. He said that it was a bad time for the trucking industry, there were many companies going out of business. There were many people out of work.

He said that a Union can't guarantee you a job.

He said that nobody likes anybody coming in and telling them how to run their business, and he said that the Unions don't tell you the good things, they only tell you the bad things. As an example, he stated that he, himself, was the one that wanted the drivers in the Union. And he referred to the two girls who were let go and their personal phone calls.

He said that he had a survey showing all the calls they made, and the times of the calls. He said if anybody wanted to see the survey, they were welcome to do so.

He said that he was talking to a friend of his about these girls causing all this trouble, and he couldn't understand why these girls who were making

190 and $195 a week, could be so unhappy.

He also said that he knows a girl in the Union who's only making $140 a week.

And finally he went to question and answer. He said if anybody had any questions they could ask questions. but didn't want to get into any hassle.

And Doris Miller opened the questioning. She said that she asked if what we asked for was what we got, and Mr. Pinter replied you don't get everything that you ask for.

She also asked him if he had to sign a contract.

He said he had to negotiate, but he did not have to come to an agreement. And then he said --

Pat Ossenfort asked what would happen if he didn't come to an agreement, and he said there could be layoffs and men out of work.

And Claire Dorr then asked the question, could the night girls bump the day girls, seniority wise, and the reply to that was yes.

At that point Bill Hunt said isn't it also true that you day girls might have to go on nights, and he agreed to that.

Then Bob Pinter said --

MR. MANGAN: You say he agreed to that. It's not clear. He agreed to that?

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THE WITNESS: Yes.

MR. MANGAN: Who's he?

THE WITNESS: Mr. Pinter, Sr.

Then Bob Pinter who sat behind me got up and said we would all, if we were put into the Union, be put into job classifications.

That if any new jobs came up in the company, that they couldnt' train one of us presently employed for that job, because we were in certain classifications.

That he would have to call somebody in from the outside to do that job.

I don't --

Q Do you recall anything else that Mr. Pinter, Sr., said at that meeting?

A I don't recall.

Q You testified that Mr. Pinter made a statement concerning girls who were causing trouble. And he mentioned the salary of certain people. Did he specify which girls were causing trouble?

A By name, no.

Q Did he specify the number of girls that were causing trouble?

A I don't recall. I don't recall if he said the number.

Q You testified that Bob Pinter, Sr., spoke about

A Yes.

Q When did you first meet with your fellow employees for this purpose?

A We had a meeting January 10th at the Sizzler, during lunch time.

Q January 10th at the Sizzler, during lunch time.

Did you drive to the Sizzler alone or with other employees?

A With other employees.

Q As you left the premises of Pinter Bros., Inc., did you observe any members of management?

A Mr. Jacoby.

Q Where did you observe Mr. Jacoby?

A In the first floor of the office. First floor of the office building.

Q When you observed Mr. Jacoby, what was he doing?

A He was looking out the windows of the doors to the entrance way of the building.

Q Where were you --

MR. BURSTEIN: Pardon me.

That establishes that because she went out to lunch to have a discussion about the Union matter, that Jacoby was looking at her and you knew they had a discussion?

JUDGE RIES: Mr. Burstein, you don't have to

A January 17th.

Q At that time, did you observe any member of management?

A Yes.

Q Which member of management did you observe at that time?

A Mr. Pinter, Sr., and Bob Pinter.

Q Where did you see Mr. -- where did you see Bob Pinter?

A He was looking out the dispatch window.

Q Where did you see Mr. Pinter, Sr.?

A He had gotten out of the building, gotten into his car. Started driving towards the exit. Turned around and came back again when he saw us.

Q Now, what did you do in the parking lot that evening?

A Well, we waited because we wanted to talk to some of the night girls about the Union.

We wanted to speak specifically to Lee Sinclair.

We thought it was her car pulling into the parking lot, and Vera got out of the car that we were sitting in and approached that car and it happened to be Alberta Nash, not Lee Sinclair.

At that time Mr. Pinter had left the building and gotten into his car.

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JUDGE RIES: On the record.

Mr. Mangan?

MR. MANGAN: Yes.

CONTINUED DIRECT EXAMINATION

Q (By Mr. Mangan) Charlotte, do you know a fellow employee by the name of Claire Dorr?

A Yes.

Q Now --

JUDGE RIES: What was that name?

MR. MANGAN: D-O-R-R, Dorr.

Q Is she one of the employees working at Pinter Bros.?

A Yes.

Q What job does she hold?

A She operates a computer.

Q Does she work in the daytime?

A Daytime, yes.

Q To your knowledge, did she attend the meeting that was held by Pinter Bros. management two days prior to the election?

A Yes.

Q Do you know of your own knowledge whether or not she asked any questions at that meeting?

A Yes.

Q What question did she ask?

A She asked if the night girls could bump the day

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girls seniority wise.

Q Was there any response given by anybody from management, for Pinter Bros?

A Mr. Pinter replied that it could be so.

Q Was transfer of work ever referred to or mentioned during the course of that meeting?

A Transfer of work?

I don't recall.

Q Well, the figures, the 190, and 195 dollars, ever referred to at that meeting?

A What was the question?

Q Figures of 190, and $195 a week mentioned during the course of that meeting?

A Yes.

Q Under what circumstances were those numbers referred to?

MR. BURSTEIN: I think that was testified to on direct examination by Counsel for the General Counsel.

JUDGE RIES: I believe that's correct.

MR. MANGAN: I'm not sure of the context in which it was referred to, and I didn't have an opportunity of looking at the record, and I want to be sure that it's covered.

MR. BURSTEIN: She did explain the circumstances.

MR. MANGAN: If she did, I think I should have

Q All right.

Now, when did Mr. Jacoby resign, if you know?

When was it effective?

A It was a semi-retirement effective in the beginning of June.

Q When did you learn that he was going to be semi-retired, effective in June?

A Officially?

Q Well, unofficially or anyhow. No matter how.

A Unofficially he wouldn't say anything.

He just officially retired, I guess, at the dinner-dance they held.

Q When was that?

A I wasn't in attendance.

Q When did you first learn about his resignation, or his retirement?

A When did I first learn about it?

Well, I knew he was coming of age 65, so any time during the conversation of his age 65, we knew that he would retire.

Q When was that?

A I don't know exactly.

Q Did you learn of it before June 1st?

A Yes, I did.

Q How long before June 1st?

REDIRECT EXAMINATION

Q (By Mr. Weinrich) During your questioning by Mr. Burstein, on the later part, you mentioned you at one point had a conversation with Catherine Turk in which she asked you some questions.

MR. BURSTEIN: Not some questions.
She aske a question.

MR. WEINRICH: I'll withdraw that.

Q During the questioning by Mr. Burstein, you were asked a question concerning whether any management representatives had ever spoken to you about the Union, and you testified that=Catherine Turk had asked you a question concerning the Union.

Do you recall when Catherine Turk asked you that question?

A No.

Q Was it before or after the Union election, if you recall?

A Before.

Q Was it before or after you signed a card for a Union?

A Before.

Q Before you signed a card?

A Yes.

Q How long before?

A That I don't recall.

Q Where did the conversation take place?

A In Joan Barry's office.

Q Was anyone else present?

A Just Catherine Turk and myself.

Q And if you recall, will you tell us what Catherine Turk said to you?

A She asked me if I had any idea, if I had heard any girls talking about a Union, and I did not want to say anything to Catherine, and I said no.

And she asked me if it ever came down to that, which way would I vote, would I want a Union or wouldn't I want a Union, and as I said, I said sometimes it's the lesser of two evils.

But I wouldn't tell her how I'd vote.

Q Now, you were asked several questions concerning a period of time when you replaced Mrs. Barry. What was Mrs. Barry's position with Pinter Bros?

A She was Mr. Pinter Sr's. personal secretary.

Q There was a date suggested to you or two dates suggested to you, August 21st and October the 4th, and it was suggested that that was the period during which you replaced Mrs. Barry.

Had you ever replaced Mrs. Barry for any period prior to that time?

conducted by Pinter Bros., Inc.?

A Pinter Bros. is a common carrier of freight serving Northern New Jersey, New York and Long Island, Westchester Counties and now part of Connecticut.

We are what they call a short haul truckman and operate a fleet of approximately 200 vehicles.

We also have another business which is at the same facility which is Pinter warehouse which is a general warehouse.

Q Now, would you explain to me the operation of your business?

In other words, how you perform the business of being a short haul carrier?

A Well, actually we pick up freight in the area and deliver freight in the area, whether it be point to point or from other carriers to Long Island, New Jersey or New York and also in reverse, pick up freight from New Jersey, New York and Long Island to other parts of the country.

Also pier frieght and just what they call general cargo.

Q Are there various documents involved in the performance of your operation?

A Well, we are regulated by the Interstate Commerce Commission and also the New York State Department of

Transportation and as such, must follow the rules and regulations which enhance a bill of lading contract on every shipment we handle where we perform our own paper work then in accordance with their regulations.

Q How many employees do you have wokring for you?

A We have approximately 170 employees.

Q And how would you classify the duties of the various employees you have?

A Well, in the operation of our business we probably have basically five or six departments.

We have a maintenance department which is self-explanatory.

It handles manintenance.

We have drivers, we have platform men and they we have day and night clerical and day and night supervision, of course.

The drivers, of course, pick up and deliver freight.

The platform men move the freight across the dock, unload and load and the clerical basically handles the paper work and any other communications say on the telephone with customers, prospective customers, and also we have a small sales force.

Q Are any of these groups of employees presently represented by a union?

A The drivers and the platform men are represented by Local 807 and also our warehousemen are represented by Local 8$7.

Q I take it there is no question --

MR. WEINRICH: No question.

MR. LANE: 807 is the charging party here?

THE WITNESS: Yes.

Q (By Mr. Lane) How long has 807 represented your employees?

What are they, your drivers, warehousemen?

A Yes.

Q Dock men?

A I would say I think it's approximately since 1951 or '52.

Correct me if I am wrong, I know it's in that vicinity.

Q Well, to the best of your knowledge, it's been since early or sometime in the early 1950's?

A Yes, 1950's.

Q What is the function of the clerical department?

A Well, the clerical department handles basically the paper work, whether it be from or to customers and then, of course, we have various break downs.

We have the billing section which handles the

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Mr. Macks' recommendations, the truthful basis on which Mr. Macks' recommendations were made is not in issue.

At least I am not considering it.

MR. MANGAN: The second part of it, assuming that it's not within the hearsay rule, it's not relevant to this proceeding as to survey conducted about dock work warehouse work.

That was my understanding of the nature of the survey.

JUDGE RIES: Well, as part of the testimony which appears to be forthcoming, I can see the relevancy of an overall program undertaken by Respondent, so you may proceed, Mr. Lane.

Q (By Mr. Lane) Do you remember where you were?

A Well, I think I can judge where we were.

Mr. Mack made certain recommendations and as a result our productivity which we measure on our platform by pounds per man hour increased, and we didn't take all his recommendations but we did take some of them and I feel and the results also show that we decreased our dock from approximately 42 men last year at this time to approximately 31 but I will also say we are handling possibly 5 percent less L.T.L., so we should have less men anyway.

It was just a week's job on the productivity and the drivers that the conference was on.

Q And prior to this time that we are talking about, by that I mean September, October, 1974, did you ever have need for Tempos?

A I would say we probably had the need but we didn't do it in that we tried to jam it in ourselves and do it ourselves, but first of all, we had no way that we could have done this IBM computer ourselves anyway.

We had to go outside and we took the recommendations of IBM on what to do.

Q Did there come a time when you requested that a phone survey of your business phone lines be done?

A Well, as I mentioned before, one of the constant complaints we had was with people trying to contact our office, claiming lines were always busy and they couldn't contact us.

Now, we felt was had a sufficient amount of local lines, New York lines, to handle the business and as a result we had never taken a survey before.

I requested approximately the end of December 1974, could have been the end -- could have been even the first couple of days of January, '75, a survey from the Telephone Company on our local phone lines.

Q Was this survey to cover a particular period of time?

A What I said to Mrs. Barry who was my father's secretary, I said just pick out a month.

I really had no time frame in mind so we picked out I think it was November if you look at it there.

Q As a result of this request did you ever receive a phone survey?

A. We received the phone survey for the month of November on January 15th.

Q I show you what's been marked for identification as Employer's Exhibit 2.

Would you look at that, please?

A This is the survey that we received from the Phone Company on January 15th.

Q I also ask you to look at the period of time covered by that phone survey.

A Well, the earliest dates -- earliest date on here is approximatey 11/12 or 11/11.

I see one and it refers to approximately 12/9/1974.

MR. LANE: At this time I would like to offer Employer's Exhibit Number 2 into evidence.

Q (By Mr. Lane) You will notice there is some writing on this exhibit for identification.

Was this writing on the survey when you received

MR. LANE: I would like to offer this list into evidence.

MR. WEINRICH: I have no objection.

I may have some questions.

I can do it on cross examination really.

MR. MANGAN: I have no objection.

JUDGE RIES: Employer's 7 is received.

(Whereupon, Employer's Exhibit 7 was received in evidence.)

Q (By Mr. Lane) Now, as a result of preparing this list of phone calls which you testified related to Vera, Bea and Dolores, what if anything did you do?

A Well, on the evening of January 15th I summoned Bea and Vera down to my father's office where I showed them these lists, I summoned them down individually and showed the list of the numbers and asked them if they had placed -- had made these calls and they both said that they had made the calls.

Q When you talk about the list what list are you referring to?

A Well, I had Exhibit 1 and also Exhibit 2 of the phone company's microfilm list.

I asked them --

Q What did they say to you?

A I asked Vera upon meeting with her and she said she had made the calls.

I said well, I said, "I am going to get September and October and if they're as bad you are going to get your walking paper," and I was, to say the least, quite angry as I can see a lot of the phones were being tied up.

I asked Vera what they were and whether September and October would be better, worst or any different and she just shrugged her shoulders.

I confronted Bea with the same information.

Q Let's go back to this meeting.

What time did this meeting take place?

A Approximately between 5 and 5:30.

Q And Vera was the first?

You summoned both of them?

A No, individually.

Q So Vera was the first?

A If I remember properly.

I don't really remember.

Q Did you discuss anything else with her at that meeting?

A The main topic of discussion was the phone calls and the survey.

Q Where did the meeting take place?

A In my father's office.

Q You say the main topic of the conversation. Was there other parts of the conversation?

A No, there was really no other conversation except for the conversation --with reference to the telephone calls.

Q How long would say the conversation or meeting took place?

A Approximately 5 to 10 minutes.

Q Now, did there come a time when you met with Bea?

A Right after Vera I met with Bea and I questioned her on the calls to the Merrineck Liquor Store and she readily admitted she made them.

I asked her whether September or October would be worst and she slyly said probably worst, so I said okay I said, "I am going to have to take everything into consideration and think it over."

Q Was that the full exchange between you two?

A Well, there was a second exchange in that after Bea went out I got a hold of a supervisor, Mrs. Turk and told her to definitely change her job in that she had --

Q Whose job?

A Bea's job, in that she had a job which required

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Q When you say we had a meeting --

A My father and I had a meeting on what we were going to do.

Q What was discussed at that meeting?

A Well, two things were discussed.

Mainly that we had to cut back anyway and my main reason was for --

Q When you say cut back anyway, what do you mean?

A Cut back on personnel because business was slowing down and my reason was for the excessive abuse of the phone calls which I thought justified the action.

Q Was anything else related to Bea and Vera discussed at that meeting?

A Nothing that I know.

Q What time did that meeting take place.

A It was approximately 5:30, 6 o'clock.

Q On Friday the 17th, what time or what were Bea and Vera's hours?

I think you testified to that but I am just not sure.

A Their hours if I remember were 8:30 to 5:30.

Q To the best of your knowledge, at the time that you ended the meeting at which you testified you determined to terminate Bea and Vera were Bea and Vera, either Bea or Vera or both anywhere on your premises?

A Not that I know of.

Q Once you had made this decision to terminate Bea and Vera what then did you do?

A Once I made the decision then I sent them a telegram.

MR. LANE: Can we go off the record?

JUDGE RIES: Off the record.

(Discussion off the record.)

JUDGE RIES: Back on the record.

Q (By Mr. Lane) Do you remember who sent the telegram?

A Yes, I sent the telegram.

Q The telegrams, as I understand your testimony, were sent both to Bea and Vera?

A Correct.

Q And were they sent immediately after the meeting?

A I think they were sent approximately 6:30 , 7 o'clock at night.

Q And your testimony is you sent both the telegrams?

A The reason I sent them,in the past Mr. Jacoby had handled these matters and he was in the process of getting ready to retire and relinguishing some of these responsibilities, so I sent the telegrams.

Q Subseqent to your sending these telegrams did you have any further discussions with either Bea or

Q Under what circumstances were those changes made?

A Well, we used to have an 8 to 5 shift and a nine to 6 shift and we found that -- as the nine o'clock people were coming in it disrupted people that were already working at eight o'clock and vice versa, when the eight o'clock shift would go home they would be disrupting the people that were still working.

So we decided for better control, better efficiency, we would split the differences and put everybody on 8:30 to 5:30.

And of course, the people that were on the 8 o'clock shift, they didn't want to go to 8:30.

The people that were on the 9 o'clock shift were very happy to go to 8:30 and there was definitely discontent and a few people grumbling.

But we felt and facts have so far brought it out, that this was the way to go, and there was also another reason.

A lot of our drivers start at 8 o'clock and there was a lot of confusion at the time clock and a lot of confusion, people coming in and out, you can imagine, with about 7:00 and 7:30 drivers, some still just starting at 7:30 quarter to 8 and 8 o'clock and office personnel coming in at the same time.

And it has cut down the commotion that we had even getting in and out of our gate which is an electric gate, cut down on all of the confusion in and out.

Q As a result of this decision which I think you testified was made early, sometime early in January, was it also implemented in early January?

A Implemented in early January too.

Q As a result of that decision did you hold a meeting with your employees?

A Oh, yes.

Mr. Pinter, Sr. held a meeting because there was so much grumbling and he tried to explain the reasons that we did this, in the interest of trying to increase efficiency and production and also the congestion with the drivers and othe office clerical starting at the same time.

Q When did that meeting take place?

A It took place I would say within a week after it was implemented or shortly after.

Q Would that be shortly after, to the best of your knowledge, January 20th?

A No, it was before January 20th.

Q It was in the morning or afternoon?

A In the morning.

Q Did you attend that meeting?

knowledge everything that you did do from that moment in reference to the union activity among your clerical workers, from that moment, January 20th, 1975, when you first learned of the attempts to have your clerical workers unionized and March 20th when the election was held, March 20th, 1975?

You testified that you had meetings with Mr. Burstein.

What else did you do?

JUDGE RIES: Could you direct him?

In this case I would like you to lead the witness, Mr. Lane.

Q (By Mr. Lane) Did there come a time that you had prepared in your office and sent letters to your employees?

A We prepared those letters with the advice of Mr. Burstein and sent the letters to all our employees.

Q Are those the letters which are part of General Counsel's Exhibits 1F in evidence?

A Right.

Q And did you send any other letters other than these letters?

A No, those were the only three letters that were sent.

MR. WEINRICH: Your Honor, may we go off the record?

JUDGE RIES: Off the record.

(Discussion off the record.)

JUDGE RIES: On the record.

A Those were the only three letters that were sent.

Q Other than the three letters which are in evidence as General Counsel's Exhibit 1, did you send any other letters to your employees, your clerical employees, concerning the union activities?

A Not to my knowledge.

Q Did you send any other letters at all to your employees?

A No.

Q Now, you have heard testimony prior to your taking the stand concerning a meeting that was held two days prior to the election, I believe.

Did you attend that meeting?

A Yes.

Q To the best of your recollection what transacted at that meeting?

A Well, Mr. Burstein supplied us with a list of facts and figures and statements that we could make and to the best of my knowledge, Mr Pinter, Sr. went verbatim down the list of facts and statements that Mr. Burstein supplied us.

Q What time did the meeting take place?

A I think that meeting took place at 8:30 in the morning.

Q Were there two meetings that day?

A Actually there were two meetings, one for the day workers and one for the night workers.

Q In reference to the day --

A To the day workers, I think it was 8:30 in the morning.

Q And for the night workers?

A I don't know, approximately 9 o'clock or 8 o'clock at night.

Q And you had given some testimony as to your general knowledge as to what took place at the meeting.

Did you attend both meetings?

A Yes.

Q Which meeting were you referring to when you just gave me testimony concerning what had occurred at the meeting?

A Well, both meetings were basically the same.

Mr. Pinter read from a list of facts and figures and statements that were allowed to be covered, and the same format was used for both meetings.

Q Prior to that meeting and subsequent to January 20th, 1975, did you have any other meetings with your clerical employees, day, night or both, concerning the union activities amongst them?

A What was that, before January 20th?

Q Subsequent to Janaury 20th, 1975, when you testified you first learned of union activities and prior to March 20th , - March 20th -- prior to March 20th, 1975, and except for this meeting which you just told me about did you have any other meetings with your employees, your clerical employees, concerning the union activities?

A No, not to my knowledge.

Q So your testimony was during that period from which you first learned of union activities until the time of the election only two meetings took place, one with day employees and the second with night employees, both of which were on the same day?

A Correct.

Q Now, during that period of time, January 20th, 1975, in the morning to the day of the election, March 20th, 1975, did you have any occasion whatsoever to discuss union activities with any of your employees, clerical employees?

A Not to my knowledge.

We were told specifically not to.

Q I am not asking you what you were told.

I am asking if in fact between that period of time or during that period of time which I framed for you a moment ago whether you had any discussion whatsoever with any clerical employee, day or night, concerning the union activities?

A No, I don't remember any.

Q Do you recall ever having told any of your employees?

A No.

Q Do you recall ever having threatened any employees?

A No.

Q Do you recall ever having given any did you ever give any instructions to any supervisory employee of yours or any employee of yours at all, including people that were either clerical or in other departments, to follow or surveil in anyway any of the clerical employees?

A No.

Q Did you ever instruct any employees of yours in any capacity to threaten any of the clerical employees, either day or night?

A No.

JUDGE RIES: On the record.

Q AS I recall it's your testimony that except for the meeting which you attended and the letter, the three letters which were sent, one under your name, two under your father's name, all of which are in evidence, you had no further communication with any employee of yours in the clerical department, night or day, any clercial employee of yours concerning their or any other member of the departments union activity, is that correct?

A Well, a few questions did come up and as Mr. Burstein had advised us, our stock answer was we are not allowed to discuss this and we can't say pro or con.

Q When you say the few questions came up, what are you referring to?

A In the course of work people start to ask us questions.

Q Do you have any particular incident?

When people asked about union activities?

A No, I know questions did come up and I know our stock answer was we have been advised by counsel that we are not allowed to discuss this so don't take it as a personal affront.

Q Except for this disclaimer which you testified you gave to the people in several incidents which you were instructed to give by Mr. Burstein, except for that disclaimer and the three letters and the meeting which was held two days before the election, did you have any other communication with any of your clerical employees, day or night , concerning union activities?

A No.

Q Now, during that same period of time, that is, the period of time commencing with when you first learned about the union activities and terminated day of the election, did you take any actions whatsoever under these three letters and the holding of that meeting, and by actions I mean did you terminate anyone?

First of all, did you terminate anyone else between that period of time?

A Between what dates?

Q January 20th?

A And March --

Q And March 20th, 1975?

A Well, I know we were laying people off from that point.

Now, how many and what I don't know, because as of now, because of your increased efficiency and productivity and making sure that everyone is giving us fair day's work for a fair day's pay, we have approximately probably five or six less girls.

So since the first of the year we are probably down to about 10 or 11 people.

A Not to my knowledge.

JUDGE RIES: Is there an allege in the complaint as to unlawful raises?

MR. LANE: There is an allege as to reprisals. It could be considered a reprisal.

JUDGE RIES: After January 20th?

MR. WEINRICH: We don't allege any benefits granted.

We allege promises, I believe, but I don't think we allege any benefits.

Of course, if they were we will be glad to amend it.

Q (By Mr. Lane) During this period of time, January 20th, 1975, through the date of the election, March 26th, 1975, I believe I asked you if you ever threatened anyone.

Let me ask again, did you ever threaten any of these employees with any loss of benefits?

A No.

Q Did you ever indicate in any way to any of your employees that if they were to join a union certain reprisals would occur?

A No.

Q Did anyone under your authority, to the best of your knowledge, did you ever authorize any of your employees to either threaten loss of employment, loss of pension benefits or any reprisals in the event that any particular employee voted for a union or in the event that the union won the election?

A No.

Q Did you ever authorize any of your employees to discuss in anyway union matters with any of the clerical workers?

JUDGE RIES: This is -- I don't see where this is getting.

It seems to me --

MR. LANE: I am sorry.

JUDGE RIES: I said if you are talking about supervisors and whether or not they were authorized, that's irrelevant.

Because if there are alleges made about supervisors making unlawful statements then the company, as a matter of law, is responsible for the acts of the supervisors.

MR. LANE: All right.

Q (By Mr. Lane) Did there come a time when two of your clerical employees, Jayne Healy and Debbie Gulbrandsen were terminated?

A Yes, they were terminated on January 20th.

Q And what were the circumstances under which been hired subsequent to their termination to fill the duties that they had previously performed?

A No.

The duties that they previously performed have been allocated, spread around to either the computer for one, or to the -- to other personnel.

Q And in the case of Debora, has anyone additionally been hired?

A No.

Q To fill her duties?

A No.

Q Under what circumstances were Jayne and Debora fired?

I mean did you tell them yourself, for example?

A No.

I didn't tell them that they were let go.

I think Mr. Pinter, Sr. did that.

Q Were they fired?

A They were actually laid off because of lack of work.

Q Under what circumstances?

I am sorry, I didn't hear what you answered.

Did you yourself terminate them?

A No,

It was again a meeting, a continuing meeting which girls went out to lunch in large groups, and we have some girls that very seldom ever eat there anyway, which is their own prerogative.

Q So if foods are ordered on a daily basis and a large number of girls go out for lunch, no report is made to you that the food that was ordered was not consumed?

A No, because we order in the morning and in the afternoon and if the girls went out at lunch time we would use that food for the night crew.

Q So it was not one of your considerations during the period from October until January of 1975 to keep a closer count on who was eating in order to cut down on food?

A Well, I would have to day that that was one of our lesser items to look at.

And I really didn't check, to be hoest with you.

Q Now, the company provides a cafeteria?

You eat in the cafeteria?

A Yes and no.

Q Did you eat in the cafeteria during the period from January 1st until January the 20th, 1975?

A Well, I am sure I ate there.

MR. LANE: What was the period?

MR. WEINRICH: January 1st until January 20th.

than five minutes though?

A There were quite a few of them, you are right.

Q Did anybody check to see if those numbers belonged to any of the office clerical employees?

A Yes.

Q Besides from the three who you found making calls in excess of five minutes?

A We didn't do an extensive check because as you can see it would require, oh, and my personal opinion Mr. Pinter is vehement about, he doesn't believe in any personal phone calls and expressed his feeling that.

Q Well, what's the company policy on personal phone calls?

A The company policy was no personal phone calls except in emergency.

Q When you spoke to Vera and Bea did you ask them if any of those calls were made in an emergency?

MR. LANE: What's the time reference?

Q On January 15th, 1975?

A I don't think I did you you want to know the truth.

Q At what time of day did you receive that survey?

A Well, the mail usually comes in at that time. We picked it up I think about 9, 9:30.

what we had been preaching.

We had had trouble with phones.

Business was slow and I thought this was a good reason and they had abused the telephone privilege.

Q Well, you testified earlier that one of your considerations is that partially because of the economic situation somebody had to be let go, is that correct?

A Well this is true, no question about that.

Q Are you now saying that the fact that these two employees made phone calls was used to justify the fact that you were letting them go for another reason, namely, the company's economic situation?

MR. LANE: I object to the use of the word justify.

He is giving testimony.

JUDGE RIES: No, I don't think so.

I think this probably is a word that could be used.

A substituted word such as --

Q Pretext, do you think it could have been a pretext for your economic motivation?

JUDGE RIES: No, if you want to ask him whether in the light of what he has perceived for letting someone go for economic reasons that he saw that this abuse

A Well, it was thereafter.

Q Right, but at the time you switched Bea's job because she had to use the telephone, you didn't switch Dolores' job even though she had to use the telephone at the warehouse manager's secretary?

A Well, you run into a little thing called, you can't switch everyone either.

MR. LANE: I object to this question.

We are willing to concede that both Vera and Bea were terminated and Dolores was kept on and to that degree they were treated differently.

We have had tons of testimony as to the reasons for which this occurred.

I mean there has been testimony on direct and on cross as to reasons why.

JUDGE RIES: There is more to be said on this subject.

Mr. Weinrich, proceed.

Q (By Mr. Weinrich) So is it correct that at least at the time that you switched Bea's job so she couldn't use the phone, you didn't even take that small interim measure against Dolores Fletcher?

A No, because I didn't think she used it as excessively, which she didn't.

Q Now, during the period from January the 15th of the last minute.

Q And in this case the last minute passed by and therefore you had to send telegrams to them?

A Well, actually the reason for the telegrams was Mr. Jacoby had handled most of this and before I realized that they had left, so -- I was busy doing something else.

Q Mr. Jacoby, was he retired on January the --

A No.

Q Was he in the office on January 17th?

A I am pretty sure he was.

Q But he didn't handle this directly, although this was one of his normal functions?

A No, he didn't handle this at all.

Q But you did consult with him though?

A Oh, I consulted with him, definitely.

Q And in your discussions with Mr. Jacoby, did you say in substance what should we do about Dolores Fletcher or had you made your own decision on that point?

A No, we discussed it, and we went over the telephone list.

In fact I think either Bea or Vera brought it up also which I said I was looking into and I realized the problem.

least to this point, written by Mr. Roth, and in that statement -- well, did you ever tell anyone at anytime or at any place that Mr. Jacoby would be the one to know the specific reasons why Jayne and Debbie were selected for lay off?

A Well, he would know if that was said, he would know more than I would in that he kept --he kept track --

MR. LANE: Be responsive to the question.

JUDGE RIES: Answer the question.

A I think I told Mr. Roth that, which is true.

Q Now, this decision to put in a computer was made when?

A The final decision?

Q The final decision?

A Well, I imagine we signed a contract approximately June or July 1974.

Q So in June of July of 1974 the company was aware of that -- of the fact that a computer would be put into operation and that that computer would eliminate certain jobs; is that correct?

A Well, we didn't know if it was going to eliminate.

Having the limited experience we had, in fact no experience, I wasn't really totally familiar with what it would do.

bad or ugly, you were committed to it, is that correct?

A Well, I think that we made an extensive study on it and we looked at many different computers and made different applications and my feeling -- I don't know how the other people feel -- if the thing didn't work out, it would have been the people didn't work at it.

Q At which point in January 1975 were you able to reach a decision that the computer was working adequately?

A I just told you my feeling.

I knew it was going to work if we applied ourselves.

Q By January 20th to your knowledge, had been proven to be satisfactory, is that correct?

A I would say even before that in my mind.

Q On January the 15th Vera and Bea offered to pay for their telephone calls, is that correct, that they had made?

A I know Vera did.

I don't remember Bea offering by my answer was first of all we couldn't assess what they were worth as far as time lost, so it was not -- was no way for me to put a price on it.

Q You could have assumed time lost from their work based upon the --

A The only action we took is what I said.

We made calls to these people and from what we could ascertain with a quick call and reasponse like, you know, "what are you calling me for," we haven't gone any further.

Q Has the company ordered any new telephone surveys since the November survey?

A Yes, we have September and October surveys.

Q Have you taken the same steps on those surveys as you did on the November survey?

A Not as extensive as this one.

Q Have you found other employees who have made calls in excess of five minutes on those surveys?

A Yes, we did.

Q What action if any has been taken against those employees?

A Well, we have warned everyone.

Q Did you specifically warn the employees who made calls in excess of five minutes?

A Yes, in fact the ones that show on there again happen to be the same people.

Q Have you taken any steps to determine by the request of subsequent iphone surveys if your warnings have had the desired affect?

A I would say that I have not received a single complaint that the phones are busy.

I personally can see the switchboard now and see which lights are lit and which aren't, which means they are busy or not.

We are in the process of changing our system.

We are having the dispatchers answer a lot of the calls direct and we find that working out very well.

And this also cuts down on people that are on restricted phones making outgoing calls because there is no operator then to ask for an outside line.

Q But you haven't requested any subsequent phone surveys?

A Well, I told you we are trying to get the one from New York but we are running into temendous opposition and we are also trying to figure out what purpose it would serve in that the local calls made with the New York number will not be shown, just like the local calls made on our local lines.

By that I mean Deer Park and the vicinity do not show on there.

And as test has been made it seems like we have one or two other people in the office that are making local -- were making local calls but they will not show on there.

Q And upon his advice you refused to permit those four people to vote?

A Yes, sir.

MR. WEINRICH: I have no further questions.

JUDGE RIES: Off the record.

(Discussion off the record.)

JUDGE RIES: On the record.

Q (By Mr. Mangan) Mr. Pinter, Pinter Bros. Inc. has been a rather successful trucking operation, has it not?

A Yes, sir.

Q As a matter of fact, it's probably the most successful trucking operation in the metropolitan New York area for short haul, local hauling?

A I'd say APA as little more but we are right up there.

Q One of the reasons why it's such a profitable and efficient organization is the close contact that you maintain with your employees, all of your employees, wouldn't you say?

A Definitely part of it.

Q Your drivers, you know your drivers personally, you know their families very well?

That almost goes to every driver you have employed for you, isn't that correct?

A Correct.

Q Same thing would be true with your warehouse people, is it not?

A Correct.

Q And I am sure it would also be true with your clerical people?

A Yes, I'd say yes.

Q Maybe even more with your clerical people because of your own personal day-to-day contact with them and, using your words, at eye level?

A Well, definitely closer at work, yes.

Q And you know their families, their problems, and their personalities pretty well, don't you?

A I would say from working with them, yes.

Q And that would also be true of your father?

A Well, now, he has his own office and he is more or less in his own place, but --

Q But it's a policy they have -- that he has established throughout the years to maintain close contact with the employees?

A Yes, I'd say so.

Q And when things are known or to be known in the office he wants you or him or one of the family to know about it?

A Well, we try to, definitely.

MR. LANE: I object to the question.

It was asked and answered, this whole line of questioning about the lunch room, has been extensively covered.

I don't see why we have to take two shots at the exact some line of questioning.

JUDGE RIES: I agree with that, Mr. Mangan.

It sounded preliminary.

Could you just sort of recapitulate the witness' testimony and get to the question that has not been asked?

Q (By Mr. Mangan) When a group of girls or a group of clerical employees left the premises to have lunch at some other location than the lunch room and it was not for a birthday or a wedding or prior to an engagement or one of the special circumstances that you have referred to, that would be unusual, would it not?

MR. LANE: I object to the question.

The same series of questions that were just asked.

The same objection.

He didn't recapitulate any evidence here.

JUDGE RIES: He asked a different question.

A I'd have to say — to disagree with that, especially in the last year or two.

Let me just fill you in.

I mean there are certain girls that very seldom eat there.

They go out.

They like to go out.

And thinking it over, like I know Bea was an example, she very seldom ate there.

There are four or five girls -- other girls including my father's secretary and three or four other that hang around together they usually go around the corner some place.

So actually if you want to figure say for the last three or four or five months I would say out of a day crew that we have now, maybe 15 or 20 girls, I don't think who have eaten there maybe between five and eight a day.

Q I am talking now about the period prior to January 20th of this year?

A I am talking about the last six months is what I am talking about, eight months.

Q All right.

In the last eight months.

That may include part of Janaury 20th, but I am talking about the period up until January 20th.

supervisors.

Q Any people in the dispatch office come in from Hamilton?

A No.

Q Have you acquired any of the work that Hamilton formerly did?

A We like to think we have because of the sales people but we also laid off a sales person of our own too.

Q But you retained those two Hamilton people?

A Yes.

Q Have you purchased any equipment since January, '75?

A We purchased no tractors, no trailers.

We had on order I think about a year ago which came in, probably three or four new types, straight jocks.

Q Three or four straight jocks came in since when?

A Since January 1st.

Maybe four or five maybe.

Q Prior to January 16th and between January 15th and January 17th, did Mr. Jacoby have any conversation with you where he requested that you not discharge Bea and Vera?

A No.

you, right down at the bottom there are two entries that have the letter "V" entered next to them.

And as I recall the testimony you entered those letters yourself; is that correct?

A Right.

See, this is the one number, this is one number 884-4208 and that's two minutes and 20 seconds and the same number is for -- I think that's six minutes and 23 seconds.

It's hard to read.

Q So when there is a blank there that means according to the telephone coding policy or whatever their policy is that is the same number as appears above it, is that correct?

A Right.

Q When did you say you ordered this survey to be taken, Mr. Pinter?

A The end of December 1974 or the first day or two or the second or third day in January.

It took approximately two to three weeks.

Q What did they charge for something like this?

A Nothing.

Q Really?

A Yes.

They were highly reluctant to give it to us.

It may be a little after 10:00 o'clock that it will be ready.

MR. LANE: Can we go off the record?

JUDGE RIES: Off the record.

(Discussion off the record.)

JUDGE RIES: On the record.

MR. WEINRICH: It is my intention to serve the motion to quash approximately slightly after 10:00 but before we close today.

JUDGE RIES: Very well.

MR. LANE: You mean I can hold him in contempt at 10:00?

MR. WEINRICH: The Region is also possibly overlooking --

MR. LANE: Come on.

MR. WEINRICH: I have nothing further.

MR. LANE: Respondent Employer calls as its second witness Joseph A. Pinter, Sr.

Whereupon,

JOSEPH A. PINTER, SR.

was called as a witness by and on behalf of Respondent Employer and, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Lane) Mr. Pinter, would you state for the enough that we should fire the girls right then and there.

I said, "Well, since we only have two more days to the end of the week, why, let's give it a little thought and we can make a decision then."

Q At that meeting was there any discussion of any union organizational drive going on amongst your clerical employees?

A None.

Q Did anything else transpire relating to Bea and Vera at that meeting?

A My son indicated that he would change their jobs somehow so that they couldn't use the telephone.

Q But it was your testimony, as I recall, that your son -- By that, you mean Robert?

A Yes.

Q -- said that it was a serious offense and he wants to fire them, and you said, "Let's wait until the end of the week"?

A Yes.

Q "And think about it again Tuesday"?

A Think about it during the next two days, and then we can make a decision at the end of the week.

Q Did you have any reason for wanting to wait until the end of the week?

A No particular reason except that it's been my policy

Q Wait a second.

Now, what time did this meeting end?

A Oh, it was after 5:30.

Q Do you have any knowledge of how the termination was effected?

A Yes.

Q How was that done?

A Only that he told me he sent telegrams.

Q Did he give you any reason that he sent telegrams?

A Because they had already gone Friday night at 5:30.

Q Now, did you know yourself whether in fact they had gone?

A I can only assume that they left at 5:30. I didn't check on them.

Q So, what your testimony is is that your son said that he would send telegrams?

A Right.

Q Because he knew they had gone or he thought they had gone?

A Right.

Q Did there come a time at that same day when you left your office?

A Yes.

Q What time was that?

A About ten minutes after six.

THE WITNESS: I will be 69 in six weeks.

JUDGE RIES: So, you are telling us now you cannot remember why you returned to the office?

THE WITNESS: No, I do not, except for the fact that I did see Bea out there, and I wanted to tell my son that -- well, they were still out there if he wanted to call them in.

And he decided against it.

JUDGE RIES: So that is the reason you returned to your office.

THE WITNESS: That's one of the reasons.

But there was another reason. I m not sure what it was. But, because I saw her out there, I thought, well, maybe we could tell them now since they're still waiting outside.

JUDGE RIES: Do you remember you left the office at about ten minutes to six?

THE WITNESS: Thereabouts.

JUDGE RIES: What is it that -- in view of your memory, which lapses sometimes, how do you happen to remember that time?

THE WITNESS: Because it so happens that it's written down in a statement.

JUDGE RIES: You have refreshed yourself with a statement?

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THE WITNESS: Yes, I did.

JUDGE RIES: I'm sorry, Mr. Lane.

Q (By Mr. Lane) Do you recall any other instances where you left the office at the end of the day and then returned?

A I do it constantly, sometimes come back three times, not once.

Q You mentioned that you saw Bea in the parking lot and that one of the reasons that you returned was to try and find your son and ask him -- to inform him that Bea was in the parking lot, or where you saw her -- I'm sorry.

Haven't you given testimony -- You saw Bea somewhere and you wanted to return and tell your son that you saw Bea in case he wants to tell her, rather than send a telegram.

Now, at that time did you find your son when you went back?

A Yes, I did.

And he decided against it.

Q Now, did you see anybody else in addition to Bea in the parking lot?

Where did you see Bea?

A She was standing near the curb as you walk up, about 100 feet from the office, in the side office door.

Q How is it that you saw her?

A Because, the way I park, I pull in to a corner and

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business was slow, and some of the girls had little or nothing to do. And he thought we could get rid of --

Q You mean who?

A Sorry. My son Philip.

-- we could get rid of five or six girls.

Well, I said to him I don't think we should go to that extreme because we don't want to disrupt the operation too much.

Q Well, do you recall the time that your son -- Do you recall at what particular meeting or what particular date your son said that he would like to get rid of five or six girls?

A Well, it was said on a few occasions. I don't recall the exact time.

Q Did there come a time that Debora and Jayne were laid off?

A Yes.

Q Do you recall when they were laid off?

A The morning of the -- they were really notified the morning of the twentieth.

Q What were the circumstances under which they were laid off?

A My son Bob and I discussed the fact that business was slow. And he said, "Besides Bea and Bill -- Bea and Vera, we could lay off five or six more."

Q Do you remember when this discussion took place?

A During the weekend, because he lives at home. He is not married, and he lives at home, and I see him every day in the week.

Q So the weekend was -- excuse me.

What weekend are you referring to?

A The weekend -- Friday was the seventeenth, so it was the eighteenth and nineteenth.

Q What was the substance of the conversation, or what did you say to him and what did he say to you?

A Well, I didn't agree to five or six. I said, "Well, let's take things easy. Tell me who you think are the least productive."

And he mentioned Debora and Jayne.

Q Now, you told me that -- or you testified that they were given notices of their being laid off on Monday morning; is that your testimony?

A I got to the office approximately 7:15, 7:30, I'm not too sure.

When Mr. Jacoby came in at 7:30, I immediately told him to try and call them at their homes so they wouldn't have to come in. And he tried both, and could get neither one. In one instance he got no answer, and in the other instance, someone did answer and said she had already left. I don't know which was which.

A Well, after he spoke to a number of girls out there -- and, in fact, I saw him hand Debbie a card, and she signed something on the wall. What it was I don't know.

He came in, I guess it was a quarter to nine, 9:00, and requested that I accept 807 as the bargaining agent for the clerical workers.

Q Now, prior to this moment when he came in, prior to this morning, this morning of January 20th, did you have any knowledge, did you have any idea, did you have a hint, an inkling, any information whatsoever that an organizational drive, a union organizational drive was taking place amonst your clerical workers?

A None.

Q No one had ever told you?

A No one had ever told me.

Q In the period of time between September, October 1974 and this morning of January 20th, did you ever have any occasion whatsoever to discuss union activities with any member of your clerical staff, with any of the clerical employees?

A No.

Q Prior to this date, January 20th, 1975, did you ever "surveil" any of your workers, any of your clerical workers, other than watching them perform their duties in the normal course of business?

(Discussion off the record.)

JUDGE RIES: On the record.

Q (By Mr Lane) Now, do you recall at this meeting of January -- excuse me; strike "January" -- March 24th, 1975, whether you were asked any questions at this meeting?

A I was asked one or two questions, but I was specifically advised not to go into a question-and-answer period, because it would become -- it would go out of hand.

Q Now, having shown you Exhibit 5 in evidence, do you recall whether or not you followed the instructions set forth in that exhibit?

A Yes, I did, with one exception.

I started off, instead of using one of the latter items, I started off by saying, "I don't want anyone to consider this a promise or a threat, because I m just reading from a script that I was given by my attorney, so that I didn't make this up, and these are the things that I was told were legal to question and report."

Q And, other than that, did you follow the script exactly?

A Exactly, yes

Q And did you include in your presentation everything in the script?

A Just about everything.

Q Do you remember anything that you omitted?

Jacoby came to you and asked you, either before the 20th of January 1975, not to fire -- before January 17th, 1975, in the case of Vera and Bea, and before the morning of January 20th, 1975, in the case of Debbie and Jayne, not to either fire or terminate the four girls?

A Not to my recollection.

Q Did there ever come a time subsequent to the termination of Vera and Bea and to the laying off of Debbie and Jayne that Mr. Jacoby ever came to you and asked that you reinstate them?

A No.

MR. LANE: I have no further questions.

MR. WEINRICH: Your Honor, before I begin my cross-examination, I would like to serve upon counsel for Respondent a motion to quash subpoena ad testificandum.

I have also served a copy to counsel for the Charging Party; and I file with you three copies.

JUDGE RIES: We will get to that after the further examination of Mr. Pinter.

MR. LANE: Are we on the record?

JUDGE RIES: We will get to this after the further examination.

CROSS-EXAMINATION

Q (By Mr. Weinrich) Mr. Pinter, you testified that you have been chairman of the board of Pinter Bros. for

A Yes.

Q At the present time is the bottom line of the company's profit-and-loss statement in the red, or is it in the black?

A As a matter of fact, during the month of July we lost a little over $1500.

Q And for the month of August?

A I don't have the figures yet

Q And what about during the period from January until July? Have you lost money each month?

A No, we have not.

Q Is there traditionally a time in your business, a certain time of year, when business is slow?

A A few months in the wintertime, maybe December, January, February at the most.

Q And during those months was business slow even when the general economic condition of the country was more favorable than it is today?

A It was slow compared to some of the busy months, yes.

Q So traditionally this would be slower in December, January and possibly February?

A Yes.

Q And thereafter business would pick up?

A Yes.

Q And despite the fact that the ecomonic conditions

A I don't recall.

Q Do you recall if at the time you met with an agent of the National Labor Relations Board, he wrote down a statement which you subsequently used to refresh your memory prior to this trial, you stated, in reference to -- well, that you stated that, "My son decided to make Vera and Bea the examples because they were the worst offenders"?

A That is an untruth.

Q You didn't make that statement?

A I did not.

Q Did you make the statement that, "We also decided we wanted to cut down on our staff because of the economic condition of the company, and this gave us an opportunity"?

A Not in those words, no.

Q Well, isn't it a fact that at the time that Vera and Bea were let go that you had been considering cutting down your staff for economic reasons, and you siezed upon their telephone calls as an excuse to do this?

MR. LANE: Object to the question.

JUDGE RIES: Overruled.

You may answer.

A Not really. There were others who made telephone calls.

But, just like stealing, in some cases, is a misde-

Vera, to my knowledge.

Q Oh, I must have misunderstood you.

So, when you pulled out of the parking lot --

MR. LANE: I object to this line of questioning --

JUDGE RIES: I think it's gotten very confused, because I think very definitely Mr. Pinter previously testified that he recognized Bea in the parking lot and he did not see Vera there; and now he seems to be telling us that he recognized Vera and did not see Bea.

THE WITNESS: I recognized Vera I said all along.

JUDGE RIES: No.

THE WITNESS: If I made a statement that I recognized Bea, that was incorrect, because Bea is the one whom I recognized because she spoke.

JUDGE RIES: Now we're back to that again.

You just said "recognized Bea."

THE WITNESS: Only after she spoke.

JUDGE RIES: So it was Bea that you recognized?

THE WITNESS: Absolutely.

No, no. Wait a minute. You are confusing me now.

JUDGE RIES: It was Vera who spoke?

THE WITNESS: Vera.

She said something about, "I'm not a night girl," or something. That's when I --- I never meant to say that I recognized Bea, because she -- she might have been there,

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Q When you finally walked out, was Vera and the other person still there?

A Not to my knowledge.

Q Did you return again?

A I could have, but I don't recall.

Q Was your son Robert still there when you left?

A I don't know.

Q You testifiedon Monday, January the 20th, 1975, you attempted to call Jayne Healy and Debora Gulbrandson, or somebody did, to advise them not to report to work; is that correct?

A That's correct.

Q Were they sent a telegram?

A No, they were not, not to my knowledge.

Q To your knowledge, they were not?

A No.

Q To your knowledge, was any effort made to telephone Vera Barber or Bea during the weekend of January 18th and 19th?

A I didn't see any reason for it since they were sent a telegram.

Q To your knowledge, is the usual company practice to terminate employees by telegram?

A No. Usually we tell them at quitting time.

Q And usually on a Friday?

A Usually on Friday or -- although there have been occasions when we have called up and -- on -- I don't recall an occasion at the moment, but I believe we did do that once or twice in the past.

MR. MANGAN: Objection, objection to what he believes.

JUDGE RIES: Well, he can testify to what he believes. It's taken with that qualification.

Q Do you believe that there has ever been an occasion where a telegram has been used before to terminate employees?

A I can't recall an incident now.

Q Did you say the company has a Teletype line, Pinter Bros.?

A It's Telex or something like that. I don't think it's a Teletype.

Q Do you have any direct communication with Western Union?

A No, we do not.

Q To your knowledge, has the company ever previously disciplined employees for making personal telephone calls?

A I don't recall, because we -- this was the first time we ever got a statement of this type from the telephone company, so we wouldn't know who might be involved.

Q To your knowledge, and in your discussions with your son Robert, has any discipline been taken against any other

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employees of the company for personal telephone -- making personal telephone calls except for Vera and Bea after January 17th, 1975.

A Well, when you say "discipline," do you mean fired or just spoken to or reprimanded or what? What's a discipline?

Q Has anybody else been fired?

A No.

Q Has anybody else been reprimanded?

A Yes.

Q Who?

A Dolores Fletcher.

Q Did you personally reprimand her?

A No, I did not.

Q In your discussions on January the 15th, 16th, and 17th, with your son Robert, was the name Dolores Fletcher mentioned to you in that context?

A Yes, it was.

And I said, "She is no better than the others. You'd better talk to her."

And he did, from what I understand.

Q But, although she was no better than the others, she was not fired; is that correct?

A Yes.

MR. LANE: We concede that.

Q Do you know when your son Robert spoke to her?

A No, I do not.

Q Do you know if Dolores Fletcher was on vacation during that week?

A No, I do not.

Q Did your son Robert discuss the fact that several of the supervisory personnel of the company had made telephone calls?

A I believe he mentioned it to me. And he talked to them too.

Q Do you know if any sort of disciplinary letter or warning letter was placed in the file of Dolores Fletcher concerning the making of telephone calls.

A Not to my knowledge.

Q Do you know if the company was asked to give Vera or Bea a reference?

A No, I do not know that.

Q According to your decision reached with your son on January the 17th, these two people were let go for cause; is that correct?

A I beg your pardon?

MR. LANE: I object to the question.

There is plenty of testimony as to the reasons why they were let go, and I don't feel that's a word of art and doesn't have to be characterized any further.

JUDGE RIES: Is that preliminary to something else?

MR. WEINRICH: Yes, it is.

JUDGE RIES: Proceed.

Q (By Mr. Weinrich) Were they let go for cause?

A Well, in my opinion they were, yes.

Q To your knowledge, was your company contacted by the New York State Department of Unemployment Insurance Benefits?

A I assume so. I don't know.

Q Do you know if these people were collecting unemployment insurance benefits?

A I do not know that either.

Q Since January the 17th, 1975, has your son Robert discussed with you at all the problem of personal telephone calls being made?

A We had some sort of a discussion. I don't know to what length we went.

Q When was that?

MR. LANE: Again I object, Your Honor.

This is outside of the scope of the direct examination.

JUDGE RIES: Overruled.

A I don't know when it was.

Q Have you had occasion since January the 17th to further review the telephone survey, Respondent's Exhibit 2?

A No.

Q Were you at all involved in the investigation to de-

MR. LANE: I object to his answer.

Q (By Mr. Weinrich) -- in the history of the company to have been laid off; is that correct, for economic reasons?

A You might be right.

Q Well, those were two of the points which were contained on Employer's Exhibit 5, the suggested points of discussion prepared by Mr. Burstein; is that correct?

MR. LANE: I object to that characterization.

It doesn't say on that document that Vera and Jayne were the first people that were ever laid off for economic reasons.

THE WITNESS: I think you --

MR. LANE: Don't answer, please.

JUDGE RIES: The question was -- as amplified by Mr. Pinter in his earlier testimony -- was that, when he spoke at these meetings, he mentioned that these were the first layoffs, with the exceptions of once this had taken place a couple of months before.

That was your testimony, was it not, Mr. Pinter? When you spoke at these meetings in March you said that there had been no layoffs, and then you made some reference to the ones that had taken place in January --

THE WITNESS: Yes.

JUDGE RIES: -- as the only exception?

THE WITNESS: Except for the fact that -- that --

Q (By Mr. Weinrich) Do you recall testifying that, when Bea came in sometime during the morning of January 20th but before 12:00 o'clock, she was quite disturbed, and you told her that you don't know anything about it, it was all in the telegram and, if she wants to find out more information, she should ask your son Bob?

A Right.

Q Now, isn't it a fact that at that time you knew all about it and you could have told her the same thing that Bob could have told her?

MR. LANE: Object to the argumentative nature of the question.

JUDGE RIES: Overruled.

A Since Bob made the decision, I wanted -- I didn't want any conflicting stories.

Q Are you certain that you didn't tell Bea that, "We don't need you anymore"?

A I'm certain of that.

Q What about Vera?

A Both.

Q You testified that you saw Whitey Schneer in the vestibule of the building between 8:30 and 9:00 o'clock speaking to a number of girls, and you saw him hand something to Debbie Gilbrandsen.

A Yes. It looked like a card. I don't know what it characterization of his testimony.

JUDGE RIES: Why don't you rephrase it, "Did you advise"?

Q (By Mr. Weinrich) Did you advise the employees that all the union could do if recognized was to make demands and that the company did not have to reach an agreement with the union?

A If we felt that we couldn't afford them, we didn't have to reach an agreement; that's correct, sir.

Q And was it in the context of that statement that you indicated that, if the demands of the union were unacceptable or unreasonable to the company, that a strike could result and, from the strike, a loss of jobs and business could result?

A Yes.

But I put the business first before the loss of jobs.

Q When you mentioned loss of jobs, did you have occasion to explain to the employees that, if they went out on strike because the company refused to accede to the union's demands, that they would be considered economic strikers and could be permanently replaced?

A No.

Q Just said there could be a loss of jobs?

A That's it.

Q At the morning meeting were there any questions asked from the floor?

A There were one or two that I recall.

And I answered them in this way: that I either didn't know, or I couldn't go into that discussion because of the situation at the present time.

Q Were there also questions asked during the evening meeting?

A I don't recall there were or not at the evening meeting.

Q Do you recall if anybody asked at the morning meeting or possibly at the evening meeting whether a full-time employee could bump a part-time employee regardless of seniority?

A I heard something about that, but I didn't know how to answer it, so I said I didn't know.

Q In your discussion at the March 24th meeting concerning the two individuals who had been terminated for making personal telephone calls, did you offer to let any employee view the records?

A What records, sir?

Q The telephone survey records.

A I mentioned that at both meetings.

Q To your knowledge, did any employee view those records?

A Yes, one, to my knowledge.

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even have said why.

Q You didn't ask him why he thought --

A No.

Q You said at the meeting on January the 10th you do recall being asked by an employee about a four-day work week.

Do you recall what you said in response to that?

A I said we'll think about it and consider it.

Q You said that to the employees?

A To the group.

Q You said think about the possibility of there being a four-day work week?

A Yes.

Q You have told us, I think, that you can't recall that there had been any layoffs in the past, and that was prior to January the 20th.

But I have also gathered that employees have been fired.

A Oh, yes.

Q For incompetence, I assume?

A Yes.

Q Absenteeism, that sort of thing?

A Yes.

Q And there's also been testimony that, in those terminations in the past, the company had generally waited until

Q Do you have any knowledge that on January 17, 1975 Vera and Bea were terminated as employees of Pinter Bros."

A That's the night that Bob sent them telegrams.

Q Just answer my question, yes or no, that's all I want to know.

A Yes.

Q Do you have knowledge that on Monday, January 15, 1975 Jayne and Debra were laid off as employees of Pinter Bros.?

A Yes.

Q Now, did, at any time between January 1, 1975 and January 30, 1975, did you ever have any occasion whatsoever to request of Mr. Pinter, Sr. or Robert Pinter, Jr. that he not fire any of those four employees?

A No, I did not.

Q Or that he not lay off any of those four employees?

A No, I did not.

Q Subsequent to this date of January 20, 1975 and through March 25, 1975, did you have any occasion whatsoever to ask either Mr. Pinter, Sr. or Robert Pinter, Jr. that he rehire any of those four employees or all of the four employees?

A No, I did not.

Q You never asked either of the Pinters to either rehire or not to fire or lay off any of the four employees, is that your testimony?

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A No, I did not.

Q Now, approximately two to three weeks subsequent to the date on which Jayne, Debra and Vera and Bea were let go, I think your testimony is there were several dates, did you have an occasion to make the following statement to Charles Brown -- I withdraw that.

Do you know who Charles Brown is?

A Yes, I do.

Q Can you tell me who he is?

A He is our controller.

Q Now, some two or three weeks after the date of the lay-offs and terminations or any time between the date of the lay-offs or terminations and March 26, 1975, did you have any occasion or did you ever make the following statement to Charles Brown:

"I told the old man not to fire those two girls but he said no because 'I don't want the union in.'"

Did you ever make a statement like that to Charles Brown?

A No, I did not.

Q Or a similar statement?

A No.

Q Never?

A No.

MR. LANE: I have no further questions.

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that the board employee testify.

Now, I note in this case that during the first session of these hearings and I believe it was April 30th, Mr. Burstein stated that he intended to subpoena Mr. Roth.

The subpoena in fact was not requested from me by Mr. Burstein until Monday of this week.

I gather, therefore, that Mr. Burstein has made no attempt in accordance with Section 102.118 to request the general counsel to make Mr. Roth available as a witness.

Let's go off the record.

(Discussion off the record.)

JUDGE RIES: On the record.

At this time I will reserve ruling on the motion to quash the subpeona to Mr. Roth and allow Mr. Burstein an opportunity to contact the acting general counsel for permission, in accordance with Section 102.118 for Mr. Roth to testify.

MR. BURSTEIN: Thank you.

JUDGE RIES: Next witness.

MR. BURSTEIN: Off the record.

(Discussion off the record.)

JUDGE RIES: On the record.

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Whereupon,

ROBERT PINTER, JR..

having been previously duly sworn, resumed and testified further as follows:

JUDGE RIES: You are still under oath. Mr. Pinter.

MR. BURSTEIN: May I have marked for identification as Respondent's Exhibit 9, a Xerox copy of a document headed 1970 employee data calendar, or rather, 1975 employee calendar.

(Document marked Respondent's Exhibit 9 for identification.)

Q I show you Employer Respondent Exhibit 9 for identification and ask you if you have the original of that document in the hearing room.

A Yes, this is the original.

Q Just briefly, is that an employee data calendar and record of attendance of Patricia Osenforth?

A Yes.

Q And is this the kind of document kept in the regular and ordinary course of business?

A Yes, sir.

Q Is it part of the regular books and records of the company?

A Yes, sir.

MR. BURSTEIN: I offer it in evidence.

Q Now, when did your company b egin to experience the onset of the present additions prosperity?

I'm sorry, recession.

Q I think this was testified before, sometime in October or November.

The general recession I think hit a little sooner. but it really didn't catch us until sometime in October and November.

Q What efforts did your company make to meet this problem?

A Well, one of the things which was mentioned I think by --

Q Did you testify to that?

A Yes.

MR. BURSTEIN: If you did, I withdraw the question.

Q Does this change the -- does this changing balance between truckloa d and LTL traffic, namely the fact there has been an increase in truckload freight of the effect of reducing the number of clerical personnel required not only because business itself is down but it is the kind of traffic handled that requires less paper work?

A Well, the number of freight bills that we have been cutting is naturally down and as a result it is less paper work, we should need, less clerical work.

MR. BURSTEIN: I have nothing further.

MR. MANGAN: Is Respondent's 10 for identification being offered into evidence?

MR. BURSTEIN: Yes.

I will offer it.

Until you have a chance to examine I --

MR. MANGAN: But you are putting it in evidence.

MR. BURSTEIN: I would offer it, yes.

JUDGE RIES: All right, it is received.

(Respondent's Exhibit 10 for identification was received in evidence.)

CROSS-EXAMINATION

BY MR. WEINRICH:

Q Mr. Pinter, these documents marked as Employer's Exhibit 10 in evidence, are they documents that are ordinarily prepared in the regular course of business or are they prepared especially for this proceeding?

A No.

These are regularly prepared in the ordinary course of business.

In fact, these are the statistics and statements we use to determine which way we are going.

Q And these are compiled from your bookkeeping department, Q Now you started to testify, you testified that you met Bea and Charlotte that night.

Did you have a conversation with them?

A I asked them whether they had a problem.

Bea said to me it is about time we joined a union.

I said if that is the case, call me up.

Q Did Bea subsequently call you?

A Yes, she called me the following night.

Q What night would that have been?

A The Tuesday.

Q Where did she call you that night?

A At home.

Q What arrangements, if any, did you make at that time?

A I said if you got girls that want to join the union I willgive you the card.

Q Did you subsequently give anybody the card?

A Yes, I gave Vera the card the following morning.

Q Which morning was that?

A Wednesday morning.

Q Do you recall the date?

A Can I see that again, please?

Q Yes.

A The 15th.

Q Did you have occasion to speak with Vera again that day?

A When I gave her the cards in the morning I said I will call you.

She said don't call me on the job, call me lunchtime and I called her at the Pizzeria on Deer Park Avenue at lunchtime.

Q Did you have occasion to meet with Vera again that day?

A When I called her at lunchtime I made arrangements to meet her that night at the bowling alley.

When I got there she was there and a few other girls.

Q What bowling alley?

A North Babylon, Sunset Bowling I believe is the name.

Q What night?

A Wednesday.

Q Do you recall the date?

A The 15th.

Q Now, you testified there were other people, there were other people from Pinter Bros.?

A Yes.

Q How many other people?

A About 15 or 16 of them.

Q Were these people in any specific classification at Pinter Bros.?

A Girls from the office.

Q Did youspeak at that time to the girls from the office?

A Monday to Friday.

Q Do you ever work Saturday?

A I have what you would call my own private business on Saturday, I clean Pinter's trucks.

Q Do you do that every Saturday?

MR. LANE: I object to this questioning, it is outside the scope of rebuttal?

JUDGE RIES: Where is this leading to, Mr. Weinrich?

MR. WEINRICH: It is leading to --

MR. MANGAN: Can we do that out of the presence of the witness?

JUDGE RIES: Can you please remove yourself from the room for a few minutes.

(Whereupon, the witness left the room.)

MR. WEINRICH: In the General Counsel's direct case certain evidence was introduced in support of the 8(a)(3) allegation of the Complaint to establish union knowledge, company knowledge of the union activity.

During the Respondent's case in chief Mr. Robert Pinter and especially Mr. Joseph Pinter, Sr. denied any knowledge of union activity prior to January 20, 1975, not only did they deny any knowledge of union activity, but in answer to questions by counsel for Respondent they denied any inkling of knowledge, any glimmer of knowledge of union activities.

I am going to in my case in rebuttal establish that there was knowledge prior to January the 20th, 1975 reputting the testimony of Robert Pinter and Joseph Pinter, Sr. and I hope seriously --

MR.LANE: I think it is part of his direct case and not rebuttal.

If he is going to impeach the credibility of our witness through statements of something like this, this is something to be done on direct.

He had every opportunity to call this witness in many times prior to this.

It is not proper rebuttal evidence.

JUDGE RIES: I agree.

MR. WEINRICH: I request therefore to make an offer of proof by questions and answers.

JUDGE RIES: All right.

MR. LANE: Can we go off the record?

JUDGE RIES: Off the record.

(Discussion off the record.)

JUDGE RIES: On the record.

The objection is sustained.

Mr. Weinrich, you wish to make an offer of proof as to testimony you would elicit from this witness?

MR. WEINRICH: Yes, I do, your Honor.

I wish to ask the witness questions and answer having

You had correctly decided the course of events which led to the reopening of the hearing, and you correctly decided that the General Counsel had opposed my motion to reopen for the purpose of adducing evidence concerning testimony by one Spera.

I just want to note for the record that on page 1477 of the transcript in the hearing held on August 21, Mr. Weinrich pointed out why it was urgent that the testimony of Mr. Spera be admitted in evidence. And as I understood it, the contention was that it would disprove my claim, which incidentally I don't believe it was previously disproven; that Mr. Joseph Pinter, Sr., and Mr. Robert Pinter, had not had union activity prior to January 20, 1975.

While I agree that you correctly ruled that the testimony by Spera was not proper rebuttal testimony, and you therefore granted or rather you therefore ruled in favor of a motion made by Mr. Lane, you did permit counsel to proceed by way of offer of proof, and I am satisfied to waive my objections to the testimony by Mr. Spera because I think it is credible on the issue as defined by General Counsel, namely, knowledge of union activity prior to January 20, 1975.

kred/kal

And at this time, your Honor, I would like to call Mr. Spera as -- for purposes of cross examination.

CSA Reporter

Friday, January 17, 1975, after seeing some people in the parking lot.

MR. BURSTEIN: I object to the form of the question, having seen some people in the parking lot. The testimony was what it was. If you are referring the testimony he gave I suggest you show him the portion of the testimony.

JUDGE RIES: Why don't you ask him the question, and--

MR. WEINRICH: Okay.

Q (By Mr. Weinrich) Did you ever, to your recollection, Mr. Pinter, have occasion in the regular course of business to get into your car, drive out of the company premises, start on your way home, and recall that you left something there and had to turn around and come back?

MR. BURSTEIN: Are we talking about Saturday, Sunday?

MR. WEINRICH: I am talking about any time.

MR. BURSTEIN: I object. It is beyond the scope of at least my direct.

JUDGE RIES: I will permit it.

A It is a rare thing I would drive off the premises and I would go back. But there have been times when I go down to the shop or I just drive around the yard and I see a floodlight that might be out or some other thing that did

Deer Park, Long Island.

Q Mrs. Bonadonna, did there come a time when you were employed by Pinter Bros.?

A Yes.

Q When did you start working for Pinter Bros.?

A April the 4th, 1966.

Q And when did you last work for Pinter Bros.?

A The last day was September the 5th, 1975.

Q During that period of time, from 1966 until 1975, did you work continuously for Pinter Bros.?

A Yes.

Q At the time you stopped woriing for Pinter Bros., how much money were you earning on a weekly basis?

A $205 a week.

MR. BURSTEIN: I did not hear that.

MR. WEINRICH: Two hundred and five dollars a week.

Q (By Mr. Weinrich) Can you try and keep your voice up, please?

And at the time you stopped working in what department were you working at Pinter Bros.?

A In the Accounting Department.

Q And who was your supervisor in the Accounting Department?

A Charles Brown.

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A Yes.

Q Was your supervisor present on that day?

A No, he was on vacation.

Q I'm sorry. August the 20th, 1975?

A Yes.

Q Your supervisor was on vacation?

A Yes.

Q Had you been assigned to do any particular type of work before he went on vacation?

A Yes.

Q What type of work had you been assigned to do?

A To do the vouchering, to work with Claire on the computer, and when Doris had the chance she was supposed to show me the payment--

Q When Doris Miller had the chance she was supposed to show you what?

A Paying of the banks.

Q What did paying of banks involve?

A We have a system where we bill the banks, we bill individual companies through a bank, and then we write out a check to our company for our machinery that's due.

Q Did you work on the computer on August 20, 1975?

A No. The computer was broken all week.

Q Did you do vouchering?

A Yes. I did.

Q Did you work on paying the banks?

A No; I did not.

Q What other type of work did you do on that day?

A I did filing and I pulled statements.

Q Did you have occasion to work with Catherine Turk that day?

A That's who I did it for, Catherine. I went down-- she had--

Q Let me-- Did you normally work for Catherine Turk?

A No. Once in a while Charlie would send me down to work--

Q How did you come to work for Catherine Turk that day?

A She said in her coffee break that she needed help, that Santa was out sick and Linda was on vacation, and the filing wasn't done and the work was piling up and she asked if I could possibly come down and help, if I had any time.

Q So about what time did you go downstairs?

A I believe it was after the coffee break.

Q What time would that be?

A Coffee break is at 10:00. I guess about a quarter to 11:00 i might have went down.

Q Had you completed your own work that you had been doing at that point?

A Yes, I did.

Q And how long did you work downstairs that day?

A Until probably about a quarter to 5:00.

Q Did she give you any instructions for the next day?

A She just said that she hoped that I could help her the next day.

Q Did you report to work the next day, August 21, 1975?

A No, I did not.

Q Did you report to work the day after that, August the 2 2nd?

A Yes, I did.

Q What type of work did you do when you reported to work?

A I did the vouchering, and then I started doing the night time cards, and then I also asked Doris Miller if she could possibly show me how to pay the banks that day because she was going on vacation and she said that she had already did them, she already paid the banks. So then I asked Claire if I could possibly work on the computer sometime that day, and she said that probably in the afternoon.

I said"I don't have anything to do right now, would you have some work for me to do?"

And she said that she had a pile of mail that came in that I could start doing.

JUDGE RIES: That was Claire who said that?

THE WITNESS: Yes.

JUDGE RIES: What is Claire's last name?

THE WITNESS: Dorr.

Q Did there come a time when you spoke with Joseph Pinter Sr., on August 22nd?

A Yes.

Q About what time of day was that?

A The 20th.

Q And how did you come to speak to Mr. Pinter?

A Claire had answered the phone and told me that Mr. Pinter wanted to see me in his office.

Q And did you go to his office?

A Yes, I did.

Q Was anyone else present?

A Bobby was.

Q Bobby who?

A Bobby Pinter.

Q Besides Joseph Pinter Sr., and Bobby Pinter, was anyone else present?

A No.

Q Did they both speak with you or only one--

A They both spoke with me.

Q As best you recall, Mrs. Bonadonna, will you tell us what Joseph Pinter Sr., and what Robert Pinter, said to you at that time and what you said to them, if anything?

A Mr. Pinter had asked me what right I had to go downstairs, who gave me--he said who gave me permission

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to go downstairs and help Catherine.

Q Which Mr. Pinter is this?

A Mr. Pinter Sr. And I said that Cathy did, and he said, "When?"

And I said "Coffee break." It was either Tuesday or Wednesday morning. But I wasn't sure which day.

And I asked him to call her into the office to see which day. And he said he already asked her and that she never gave me permission to go downstairs and help.

And then he said, what right did I have to go down on my own.

Q What did you say?

A I said Catherine said at ooffee break she needed help and that Santa was out, Linda was on vacation, the filing was not done and the work was piling up.

And Bobby said, "Who gave you permission to go down on your own?"

I said, "Catherine needed help."

And then he said, "Who gave you permission to go down on your own?"

And I said that Cathy needed help. "And I don't understand what you are doing," and I said, "You're trying to make it sound like I committed a crime or sin."

And then Mr. Pinter said that I should have worked upstairs and asked the girls upstairs if they needed help.

Q Did you answer him?

A I said the computer was broken and I did not think anybody needed help.

And then Bobby said, "Doesn't this sound like harassment?"

I said, "I don't know what you mean, Bobby."

And then Bobby said, "Why didn't you help the girls upstairs?"

And I said, "I didn't think of it."

And Mr. Pinter said, "Don't you talk to the girls upstairs."

And I said, "Yes."

And then Bobby said, "If you talked to them you would have known that they needed help."

And I said, "I didn't think of it."

And Mr. Pinter had said to me that Doris Miller was going on vacation and she had a pile of work on her desk, why didn't I help her.

And I said that she was slow in her work. And he said, "That's all the more reason why to help her."

And I said, "No, because Charlie knew before she went on vaction that she had--she was behind, and if he wanted me to help her he would have asked me to do so. But Charlie probably figured that if I keep helping her she would never be able to do the work."

Q Is this what you told him?

A Yes. And that in my opinion she never will be capable of doing her work and Mr. Pinter said that wasn't in question here.

And then Bobby had said, "Why didn't you help one of the other girls?"

He said Pat was out and "I'm sure you know she went to Court and she was behind."

And I said that I did not think of helping her.

He said, "Don't you agree this is harassment? Put yourself in my place. Don't you agree that this is harassment?"

And I said "No. I don't agree, because it wasn't meant to be."

Then Mr. Pinter said that I had no right to go downstairs and help Catherine, and that she had no right to accept my help without checking with him first.

And then I said I would understand if I was doing nothing for eight hours, but I went downstairs to work. I worked hard. And I'm a damn good worker.

And I started crying because I was upset. And I was nervous.

And then Mr. Pinter said that "You workers are in question here. Whenever I ask Charlie about you, he always says, you're a good worker."

And Mr. Pinter had said to me if he ever spied on me.

Q He asked you that?

A Yes.

Q Yes?

A And I said no. "Not that I know of. Why would you ever spy on me?"

And then he said, did he ever spy on any of the other girls.

And I said "I don't know what you mean."

He said did I ever stand in the hallway and spy on any of the girls.

I said, "Mr. Pinter, I don't work down here and I don't know."

So then Bobby had said -- Mr. Pinter had said that if Charlie had asked me to do any filing in the kitchen for Charlie when I had the chance.

And I said no. And then I said I didn't know what he meant.

And then he said that did I-- The only thing Charlie said for me to do was to recopy the voucher sheet over.

Q Did you do that?

A And I told Bobby I did most of it, but I couldn't finish it because there was an error in it, and I did not want to have to recopy it for the third time.

And Mr. Pinter also said before this did he ever harass me.

Q Did you answer that?

A And I said yes.

And he said "When?"

And I was going to tell him and Bobby said, "All you girls do is lie. You are all liars."

He says, "You want to see the affidavits?"

I said, "I don't know what you mean 'affidavits'"; and he said, "The affidavits from the hearing."

I said, "I wasn't there. I don't know what took place."

Q What did he do then?

A And he kept saying he wanted me to--excuse me. He wanted me to read the affidavits from the hearing. And this kept going--

JUDGE RIES: Do you want to wait? Do you want to stop for a minute to collect yourself?

THE WITNESS: Thank you. Excuse me.

A (Continuing) Then he said that this is going on back and forth.

Q What was going on back and forth?

A Him. He wanted me to read the affidavits, and then

I did not want to read them.

Q Did he show you anything?

A No. He was walking over to the desk like he was getting them out.

I said I didn't know anything about them.

And then he said, "I'm sure you don't mind saying you don't know anything about the affidavits."

He says, "All the lies that went on," he says, "I'm sure your friends told you about the hearing."

I said, "Yes, but I wasn't there."

And then I said, "Do you want to know if I signed the card for the union? I did."

And Mr. Pinter had said at the same time that he did not want to know.

But then I had already said it.

Then Mr. Pinter had said something about Linda Schulz being late. And then he didn't say anything all the time while this was going on, while she was late, but one day he had to say something to her because he was so upset over it, and the next time she was late he would fire her.

And Mr. Pinter had said something else about the girls coming out of the ladies' room, that that was harassment. They come out late in the morning and that was harassment, and don't I think so.

And I said, I don't know because I don't work downstairs.

I said, "If you want to see girls in the ladies' room, go up there and look at them 15 and 20 minutes at a time."

And he had said--

Q Who had said?

A Mr. Pinter said "What kind of people are you that when your coworker walks into a restaurant you get up and you walk out?"

Q Did he say what he was referring to?

A I said, I didn't understand what he meant.

And he said, "Yesterday at lunch."

And I said, "I wasn't in yesterday, Mr. Pinter. I was home sick, my legs hurt and I couldn't walk."

He said, "I didn't ask you why you were out."

He said it nicely. He wasn't nasty. Don't get me wrong.

And I said, "No, you didn't ask me."

And then Bobby said it was Linda and Judy were in a restaurant with Pat and Claire walked in and they got up and left and Mr. Pinter said, "Would you have got up and left it I walked into the restaurant?"

And I said "No."

And he said, "Then why did they do it?"

I said, I didn't speak for others.

And then Bobby said "They are your friends, you go to lunch with them; they're liars."

Then Bobby had--no, he did not. Mr. Pinter said that when Charlie came back Monday, that this will all be straightened out.

And Bobby then said, "We let ten girls go and if Charlie doesn't have enough work to keep you busy, upstairs, I guess we don't need you, we can let a few more girls go."

And that's when I stood up and said I don't feel good, "I quit; I'm sick," and I said, "I'll give you two weeks' notice. I quit," or something.

He had opened the door already. I don't even know how Mr. Pinter got to the door, and he was at the door--"If you're sure that's what you want," and he turned around with a smile on his face and said, "That's fine with me."

Q What did you do,then, Mrs.Bonnadonna?

A I left the office and I only spoke to his secretary, she was standing in the hallway there. And I went up to my desk, and I was too upset to--I just put everything in a folder. I went downstairs, and I said, "Mr. Pinter, I don't feel good. Is it okay if I go home?"

And he said, "Yes."

And then I went into the hallway to call a cab, and then it must have been lunchtime because the girls came out and they said they would take me home.

Q Do you know how long the conversatimn took?

A I went in there twenty after 11:00 and when I called the cab it was 12:00 o'clock.

Q Now, you said that during the conversation both Bobby--Robert Pinter and Mr. Pinter Sr. had accused you of harassing them.

MR. BURSTEIN: She did not say that at all. That is not what her testimony was, and I object. It is a leading question.

We have enough problems here, don't add to it.

JUDGE RIES: Sustained.

That's not the way I understood it, Mr. Weinrich, although I have some question about it.

Q (By Mr. Weinrich) Will you tell us what, if anything, Mr. Pinter or Robert Pinter said about harassment?

MR. BURSTEIN: She has already testified to that.

JUDGE RIES: No. I was going to try to clarify that myself, Mr. Burstein, because I was not sure what she had said.

MR. BURSTEIN: She had said they kept saying they regard this as harassment.

JUDGE RIES: That's what I want to clarify.

THE WITNESS: Robert Pinter, at least seven or eight times, even more, had said to me during the course of that conversation, "Don't you agree Doris this is harassment to management? Look at it at my point of view."

JUDGE RIES: Harassment to management?

THE WITNESS: Yes. He said, "Look at it from my point of view."

I said I couldn't look at it from his point of view because it was not meant to be harassment. And Bobby also had said that when the girls had walked out on the other girls, that that was a pretty low thing to do.

And then--

Q Go ahead, Mrs. Bonadonna.

A I'm sorry.

Q Was it specified, did anybody specify what the harassment was?

A That-- Harassment because I went downstairs to help Catherine and I did not ask the girls upstairs if they needed help, and that's what he kept saying was harassment, on them.

Q Did you report to work on August 25?

A Yes, I did.

Q What day of the week--that was a Monday, wasn't it?

A Yes.

Q What did you do that morning?

A I went in earlier, and I went to Charlie because he came back from vacation, and I told him what I did and that I did not mean to quit my job, I was upset and then I quit.

And then I told him what I said about Doris Miller because it wasn't my place to say something like that.

And I did not want to get him in trouble.

And I told him that I had a letter from Mr. Pinter retracting my statement.

And then he said that he would talk to him, and that later on I should bring my letter down to him.

Q What did you do after speaking to Charlie Brown?

A I went back into the lunchroom until it was time to work.

Q And did you start workint that morning?

A Yes.

Q Did there come a time when you saw Mr. Pinter Sr. that day?

A Yes, I did.

Q Where did you see him?

A I went into his office.

Q Was anybody else present?

A No.

Q Did you have a conversation with him?

A Yes. I said to him that I did not mean to quit, an d I have a letter here retracting my statement, if you could please read it.

And then he read it, and he said--handed it back to me and he said, "How would that look if I took you back? It would look--after you told everybody that you quit, it would look like I needed you."

Q Was anything else said?

A No. I said I understood, and I left his office.

Q Did you continue to work that week?

A Yes.

Q Did there come a time when you did something with that letter that you had shown to Mr. Pinter?

A I mailed it back to him.

Q And what--

A Figuring--

Q When did you do that?

A On a Saturday, I believe.

Q Do you remember what Saturday it was?

A Like the 30th.

Q Of August?

A Yes, sir.

Q Prior to September 5 did you have occasion to speak to Mr. Pinter again?

A Yes. He called me in the office once more and Bob--

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Q When was that?

A The 3rd of September.

Q Who was there?

A Bobby was there, and Mr. Pinter's secretary.

Q Who spoke to you at that time?

A Mr. Pinter did.

Q And what did he say?

A He said that they reviewed the letter and they cannot accept my retraction.

Q And until when did you work?

A Until that Friday, September 5th.

Q And have you worked with Pinter Bros. since?

A No.

MR. WEINRICH: I offer this as General Counsel's Exhibit 20 for identification.

(Thereupon, the document referred to was marked General Counsel's Exhibit 20 for identification.)

Q (By Mr. Weinrich) Mrs. Bonadonna, I show you General Counsel's Exhibit 20, marked for identification, and ask you if you can tell us what that is (handing document to witness).

A (Witness examines document) That's my letter of retraction.

Q Is that the letter you mailed to Pinter Bros.?

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A Yes, it is.

Q Can you tell me what is at the bottom of that Xerox copy?

A Certified m[illegible]. This, return receipt requested.

MR. BURSTEIN: We concede we received it.

MR. WEINRICH: Your Honor, I ask that General Counsel's 20 marked for identification be admitted into evidence.

JUDGE RIES: Received.

(Thereupon, General Counsel's Exhibit 20 for identification, received in evidence.)

MR. WEINRICH: I don't have the original, just a Xerox and it is a little difficult to read.

Q (By Mr. Weinrich) Mrs. Bonadonna, during the course of the conversation that you had with Joseph Pinter Sr., and Robert Pinter, on August 22, what tone of voice did Joseph Pinter Sr. speak to you in?

A Very even tone.

Q And Robert Pinter?

A Sometimes a little higher pitched.

MR. WEINRICH: I have no further questions.

JUDGE RIES: Mr. Mangan?

CROSS EXAMINATION

Q (By Mr. Mangan) Mrs. Bonadonna, at any time during the course of that first conversation that you had, I believe--was it August 21st?

MR. WEINRICH: 22nd.

Q August 22, that you had with Robert Pinter and Mr. Pinter Sr., did they ever refer to what their conduct would be after the NLRB hearing was over?

MR. BURSTEIN: I object to the form of the question. It is a leading question.

JUDGE RIES: The objection is sustained.

Q Was there any reference at all to future conduct by Robert Pinter or Mr. Pinter Sr., regarding the NLRB proceedings?

MR. BURSTEIN: Same objection. The mere fact that you changed the verb does not change the question.

JUDGE RIES: Well, I see Mr. Mangan has a problem because we are dealing with a conversation alleged to have lasted for an hour and twenty minutes, and I don't know how we can--we have got to zero in on what he is trying to get at.

MR. BURSTEIN: I think that counsel for the General Counsel has asked her everything about the conversation. That's not a proper way to do it but you say so--it is not seriously not proper to say you talked about this, you talked about that.

JUDGE RIES: The witness has not testified for an hour and twenty minutes, and I don't think they could have given us the entire conversation.

MR. BURSTEIN: The proper way to do it is to ask her if there is anything else and properly exhaust her recollection.

JUDGE RIES: Everything else would take us an hour and twenty minutes to tell us, and I think that would be--

MR. BURSTEIN: I have an objection.

You rule on it.

JUDGE RIES: Okay.

MR. BURSTEIN: I don't want to argue with you about it.

JUDGE RIES: Try again, Mr. Mangan.

Q (By Mr. Mangan) Was there anything other than what you have discussed--

MR. BURSTEIN: Now she knows exactly what you want.

You asked a leading question. The objection is sustained--

MR. MANGAN: You did not even let her hear the question.

MR. BURSTEIN: Sure, I heard it.

JUDGE RIES: Go ahead, Mr. Mangan.

MR. BURSTEIN: All right; I'm sorry.

Q During the course of that meeting that you had with Mr. Pinter Sr., and Robert Pinter, was there any mention made about future conduct after the completion of the NLRB hearing?

A Yes.

Q What was that?

MR. BURSTEIN: You have an objection, you know, it is so palpably bad.

JUDGE RIES: I understand your objection.

MR. BURSTEIN: Okay.

JUDGE RIES: Go ahead and answer that, Mrs. Bonadonna.

A Bobby had said that "You girls came back from lunch late, and that was harassment to management."

He said, "I did not say anything, I was real nice while this whole thing was going on. I have it all written down. Now that's over, you just wait and see the changes with me."

Q During the course of your testimony, there is reference to distinctions between the girls upstairs and the girls downstairs, and that Mr. Pinter--Messrs. Pinter were indicating that you should not be with the girls downstairs,' and you were unfriendly to the girls upstairs.

Did that have any meaning to you?

MR. BURSTEIN: There was no such testimony.

There isn't a scintilla of such evidence in the record. That question was not asked, it was not answered. She did not so testify, not a word, not a syllable, not a part of a syllable, not a preposition, not an adverb.

MR. MANGAN: Is that an objection?

JUDGE RIES: I take that as an objection.

MR. BURSTEIN: Yes, it was an objection.

JUDGE RIES: I don't recall the testimony in that form.

MR. BURSTEIN: She will now, you can be sure. But she certainly did not testify to that.

Q (By Mr. Mangan) To your knowledge--

MR. MANGAN: Can I proceed, or--

JUDGE RIES: Proceed. You are going to put another question?

Q To your knowledge, was there any distinction between the girls upstairs and the girls downstairs developing out of this meeting that you had with Messrs Pinter on the 22nd of August of 1975?

A Mr. Pinter, all he did was ask if I spoke to the girls upstairs and I said that I did. Then he had also later on he had said that I had no right to work downstairs.

Q Did you understand what he meant when he said you had no right to work with the girls downstairs?

A No. And I still don't understand it.

Q Did you have such a conversation?

A Yes.

MR. BURSTEIN: What do you mean by "such conversation"?

Does that relate to the preceding question?

MR. MANGAN: I hope.

MR. BURSTEIN: I object to the question.

MR. MANGAN: Then I will repeat the question, all right, and give you an opportunity to object again.

Q (By Mr. Mangan) At any time after the election, the union election, did you have a conversation with Claire Dorr regarding the election?

A I did.

Q Do you recall where that conversation took place?

A Yes. I had gone to the ladies' room, and she came in and we had--

Q It took place in the ladies' room?

A Yes.

Q Do you recall what time when that took place? I am not talking about the time of day--

A The day after the election.

Q The day after the election.

MR. MANGAN: I have no further questions.

JUDGE RIES: I would like to ask a question or two.

Q (By Judge Ries) You say that on August the 20 you worked for Catherine Turk from about 10:45 until 4:45?

A Yes.

Q You mean you actually were physically working with her, you were near each other?

A Not at the same desk, if that is what you mean.

Q Within eyesight of each other?

A Yes.

Q Did you discuss your work during the day as to what was going on?

A First she gave me the filing to do, and I did the filing, the original pros, and then she gave me statements to pull and I pulled the statements.

Q And you say that on August 22 Mr. Joseph Pinter told you that he had asked Catherine Turk whether she had given you permission to help her and she denied it?

A Yes. He had said later on in the conversation that she had no right to accept my help,and I had no right helping her, she should have checked with him first, that my place was upstairs, not downstairs, that I should be helping the girls upstairs.

I tried to explain to him that the computer was broken and I could not help them because a lot of that work was done with the computer, because Charlie had wanted me to work all week on the computer with Claire and like do my vouchering and Doris had the chance she was supposed to show me how to do the banks. But since the computer was broken, like it is not that much work, they can catch up on their own work, since it is--if you are not actually putting the work into the computer and taking that and checking that stuff, then you have time to do other things that you normally have time to do.

Q Would you describe again for me what happened when Mr. Joseph Pinter said that he was going to wait until Charlie came back on Monday? Pick it up from that point, if you can?

A He said something about when Charlie comes back on Monday he was going to straighten this whole thing out.

Q What did he say after that?

A I don't think--I don't think he said that--no, I think he said something about what Linda Schulz after that, I am not sure. But then I know--all I remember--I was crying through this whole thing after that and all I--and I was very upset.

Then I also remember Bobby saying, was that that they let ten girls go, and if Charlie did not have enough work to keep me busy, I guess he did not need me either and she could let a few more girls go.

And I don't even remember anything more--

Q When did you say you quit or did you?

A I did say that, after Bobby had said that, I said

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A Yes.

Q He did not ask you whether you signed a card?

A No.

Q He had never inquired about that?

A No.

Q Nor did Mr. Charlie Brown?

A No.

Q All right.

So that so far as you know at the time you had the meeting with Mr. Pinter on August 22, he had no knowledge that you signed a card?

A No.

Q Now, getting back to the canversation with Messrs. Pinter, isn't it a fact that Mr. Pinter said to you in words or in substance, you're a good worker, acknowledged that you were a good worker?

Did he say that?

A Yes. I thought I said that in my testimony.

Q I am not saying you did not say it, I just want to be sure I heard you.

Mr. Pinter said in words or in substance, "Doris, you're a good worker," right; isn't that true?

A His exact words were, "I'm not questianing your work, that your--that whenever I ask Charlie, he always says that you are a good worker."

we understand you. It is yo r testimony that when you told him you wanted to quit, he said, "Are you sure that's what you want to do, fine"?

A I'm almost positive that's what he said.

Q Let me show you your statement?

A He could have said okay, but I am almost positve he said fine.

Q Fine?

A I know I have "okay" written there, but I was trying to say his exact words, and I am almost positive he said fine.

Q The exact words you put down was good--

A And I struck it out. I still wasn't sure then what he said.

Q Mrs Bonadonna, I will be very patient with you --

A I'm sorry, sir.

Q Okay.

You said that you are sure the word was, if that's what you want, fine.

I call your attention to the fact that the word "good" was put in and then you struck it out and you put down "okay."

A Right.

Q Okay.

Now, did you ever, from there, provide to anyone a statement in writing in which you reported that when Mr.

JUDGE RIES: And--

THE WITNESS: And that-- And whatever I was told to do, and that's what I should do; that I don't have any specific job or anything, whatever I am told to do, I do. And if I don't like it, you know where the door is.

JUDGE RIES: That was four years ago?

THE WITNESS: Or five years ago, it could have been.

JUDGE RIES: What did you say?

THE WITNESS: I was very upset then also.

JUDGE RIES: Did you--

THE WITNESS: And Mr. Jacoby was in the office, too, at that time.

JUDGE RIES: In the course of your testimony here, you have--

THE WITNESS: I have never been in any other trouble with work, not that I know of.

JUDGE RIES: In the course of your testimony here you have had several--you have at several points broken down or lapsed into crying, become highly emotional, I would say.

On that occasion, four or five years ago, were you that way when Mr. Pinter called you in?

THE WITNESS: Yes, I was. Not as bad, like I was that day.

JUDGE RIES: Does that start anything?

MR. BURSTEIN: No.

Q (By Mr. Bangan.) Prior to the-- withdrawn.

Didyou ever do any work with relation to the computer?

A Yes, I did.

Q What did you do?

A I was doing keypunching and working on the computer.

Q When were you doing that?

A Before the election. And also Charlie had told me--before the election, Charlie was going on vacation, and that Friday he went on vacation he had also said to me that when he came back from vacation how would I like to go to the computer school.

He said he thought it was almost definite. that he was going to check it over with Mr. Pinter. And I said I would like to go to computer school.

And then after that, the Monday after the election when Charlie came back from vacation, I was taken off th e computer and the keypunching and put on past dues.

Q Did you ever have anything to do with the computer after that?

A Only to fill in if somebody was not there, just like if they needed me for a few minutes. And then I was going to do the computer again when Claire went on vacation. That's why I was supposed to work there for that week.

Q What was the period of time that elapsed between the time you were taken off the computer and when you were going to go back on the computer when Claire Dorr went on vacation?

A That Monday, right after election, and Claire was going to go on vacation September 15th.

Q And when were you advised that you were going to be used on the computer when Claire Dorr went on vacation?

A Charlie told me.

Q When did he tell you?

A I think a week before he went on vacation.

Q When would that be?

A He was on vacation that week of August--that week of August, you know, the 20th..

Q So it would be approximately August 15, 1975?

A Yes, sir.

Q Are you familiar with when in point of time the computer came into operation at Pinter?

MR. BURSTEIN: Is that relevant at this point, your Honor?

JUDGE RIES: No. I don't think that is.

Q How long had you been working on the computer before the election and before you were removed from the computer?

MR. BURSTEIN: I think it is irrelevant. It has ntohing to do with it.

JUDGE RIES: I think that--

MR. BURSTEIN: She was not removed from any computers.

MR. MANGAN: She was removed from the keypunching and she says she was removed from the computer operation.

MR. BURSTEIN: The computer was down that week.

JUDGE RIES: I will permit that question.

MR. MANGAN: Can I have the question read back, please?

(Question referred to read by reporter.)

A I was working on the computer--before the election?

Q Yes. Before the election.

A When-- I guess from January. That's when the computer was put in. Whenever the computer was put in, until March, is that when the election was, in March?

Q Yes.

A Until that Monday when Charlie came back, the Monday after the election.

Q When the the computer came in what were you doing at that time?

A I was doing keypunching and learning how to work the computer.

Q Who was teaching you?

A Charlie was teaching Claire and I the computer, and he was teaching the keypunch. By then we knew how to do the keypunch. I wasn't the only one on the computer and on the keypunch. It was the two of us.

Q Who else was--

A Chaire.

Q Claire Dorr?

A Yes.

Q And yourself?

A Yes.

Q And you both started at the same time?

A Yes.

Q And you were both doing keypunch work?

A Yes.

Q And at any time before the election did you in addition to performing keypunch work, did you do any verifying or any other type of work on the computer?

A On the computer--

MR. BURSTEIN: She testified it was after the election she was doing this.

MR. MANGAN: You are not listening.

MR. BURSTEIN: I am listening.

She says after that date she was working learning keypunch.

MR. MANGAN: You are not listening.

MR. BURSTEIN: I can't follow you sometimes, I confess, but I do listen. Let's hear it again.

I got the times--I thought he was speaking of up and back.

Q (By Mr. Mangan) In January, when the computer came in, what work was there being done on--as far as keypunching?

A We were working on the keypunching.

Q You say "we" were working, who were you working with?

A With Claire and another--and this--I don't remember the lady's name, again; I just forgot it. Joan. Claire, Joan, and I were working on the keypunch.

Q And did you continue to work on the keypunching up until the time of the election?

A I was working mostly on the computing up until the time of the election.

Q When you are saying you are working on the computer, how do you distinguish between the keypunching and computing?

A The keypunch is, you keypunch the cards that go into the computer and the computer is the work you have in there and that's coming out of it.

Q Is there any job description to that second, other than keypunch, this other work on the computer? Do they call it by any other name?

A I guess it's programming, but I dan't know if that is what we were doing.

Q So we will refer to it--you were being trained to perform programming?

A Yes.

Q And how long after you started doing the keypunching did you begin to learn the programming?

A When the machine came in, the programming machine came in, that's when basically we were on that, and then he had another girl at that time that was let go that was working on keypunch straight with Joan.

Q Okay.

How long were you working on the programming before the electian took place?

A I guess from January to March.

Q So you were doing both keypunching in January and programming in January?

A I was doing mostly programming in January and doing the bookkeeping in January. I did not do much keypunching any more after--after Vera was let go, I did not do hardly any keypunch. I wind up helping Doris Miller with the bookkeeping. I did half the bookkeeping and I did the computer.

Q All right; that's what I was doing.

QWhen you say the computer, we are dealing with programming?

A Yes.

Q And the Monday after the election you were advised by Charles Brown that you would not be doing the programming any longer?

A Yes.

Q And you would not be doing the keypunching now any longer?

A Yes.

Q And you would be-- And you would not be going to school for training on the computer?

A There was no mention of school; no.

MR. MANGAN: I have no further questions.

RECROSS EXAMINATION

Q (By Mr. Burstein) Would you just go -- Would you just define what programming is? Tell me what you do when you program a computerized system?

A I did not go to school for this. I don't know all the detail words for it. We put the cards into the machine that were already keypunched and we would take out different jobs on it, different jobs would come out of the machine.

We break the jobs down.

Q Okay. Also yo[illegible]ere working on the 1975 past dues, January and February, weren't you?

A No. I was put on 1974 past dues in March.

Q March.

A After the--I was taken off the computer.

Q In 1975, past dues--the 1974 past dues were bills owing for the year 1974, is that what that means?

A Yes.

Q And there were a large number of those in 1975, there was a backlg of those, weren't there?

A I believe so.

Q And you were also told that you did such a good job on the 1974s that they wanted you to take over the 1975s from Pat?

A Yes.

Q Half. Because the 1975s were too much for one girl?

A Yes.

Q And the company was very anxious to get out the past dues because that's how the company gets money?

A Definitely.

Q And that was a pretty urgent job, and they wanted to give it to you because you were skilled; is that right?

A I don't know if that is the reason why they wanted to give it to me, but they gave it to me.

Q Did they tell you you did a very good job on the 1974s?

A Charlie did, yes.

MR. BURSTEIN: I don't have anything further, your Honor.

REDIRECT EXAMINATION

Q (By Mr. Weinrich) Mrs. Bonadonna, the judge had asked you a question concerning a--any similar incident or any other confrontations between yourselves and the Pinters and you testified that you reacted in a similar fashion to the way you did on August 22.

Are you a highly emotional person?

MR. BURSTEIN: We will concede that the evidence at this hearing--

A I'm very highstrung. I am a very nervous person. Let us put it that way. I am not highstrung but I am nervous.

Q Well, to your knowledge, did either--was either Robert Pinter or Joseph Pinter Sr. aware of this prior to August 22?

MR. BURSTEIN: I object.

JUDGE RIES: How could she know that other than by the kind of incident that we have--that she discussed that had happened four years prior?

Now you can ask her were there any other incidents which would have brought that to their attention.

MR. WEINRICH: Okay.

Q Mrs. Bonadonna, during the period of your employment with Pinter Bros., were there any incidents that, to your knowledge, were observed or to which Robert Pinter or Joseph Pinter Sr., were party to which would have indicated to them that you were nervous or of a highstrung nature or highly emotional?

A I believe-- I honestly believe that they both know that I am a very nervous person because of how I work and the way I work. I could be working and I'll be--my whole body is moving, I work like a maniac and I believe they both know that. Everybody else in the company knows it, Catherine knows it, Charlie knows it. I work--I sat in front of Bobby for two years and when he used to turn around, I would move--I work like that. I am a fast worker and that's how I work because of my nervous, that's why I work so fast. I do believe they know it.

Q Do you recall any--

MR. BURSTEIN: We are not going to get into medical testimony, psychiatric--

MR. WEINRICH: He is sitting outside.. The Government--

MR. BURSTEIN: I did not know--

MR. WEINRICH: I have no further questions of the witness.

JUDGE RIES: Thank you very much, Mrs. Bonadonna.

(WITNESS EXCUSED.)

MR. WEINRICH: Your Honor, let the record indicate that Mr. Burstein has returned to me both

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of Bonadonna--Doris Bonadonna's statements.

General Counsel calls as its next witness, Diane Lufker.

JUDGE RIES: Miss Lufker, you are still under oath.

Whereupon,

DIANE LUFKER

being previously sworn, resumed the stand and testified further, as follows:

DIRECT EXAMINATION

Q (By Mr. Weinrich) Following the time that you gave testimony in this proceeding on August 18, 1975, did you return to work that week?

A Yes, I did.

Q And did you work on August 20, 1975?

A Yes.

Q Do you recall what type of work you did on that day?

A Yes. The same work I usually do. I am accounts receivable clerk.

Q In which department is that?

A On--upstairs on the second floor, Billing Department.

Q And who is the supervisor in that department?

A Charles Brown.

Q Was he there that week?

A No. He was on vaction.

Q Do you recall if you had occasion to assist Catherine Turk on August 20?

A Yes. I believe I did. I went down sometime in the afternoon. I believe it was around three o'clock.

Q And how did you come to assist Catherine Turk. Did eh approach you or did you approach her?

A I approached her.

Q Now, on August the 21st, 1975, did you report to work?

A Yes, I did.

Q And that day did you have occasion to operate the Xerox machine?

A Yes. That morning.

Q What were you copying?

A One of our return statement stubs grom Universal Carline (phonetically spelled).

Q While operating that machine did you have occasion to see or speak with Joseph Pinter Sr.?

A Yes. He came over to the photo machine and wanted to know what I was taking a photo of.

Q What did you say to him?

A He wanted-- He approached me and said, "What are you taking a photo of?"

And I showed him.

Well, he--I already had it on the machine and he grabbed it off the machine. And I explained to him I was taking a photo of this stub to give to Bill Hunt for his purposes. And he told me that I was taking the photo incorrectly, and he showed me how I should be taking the photo.

Q How will you describe Mr. Pinter's demeanor at that point?

A He was very upset, if that's what you mean.

Q Had you ever operated a Xerox machine before?

A Yes.

Q Were you doing anything on that occasion that you had never done before?

A No.

Q Prior to that date, had Joseph Pinter Sr. ever taken a direct interest in your work before?

A No.

Q Did you have any other occasion that day to have any dealings with Joseph Pinter Sr., during the morning?

A Yes. He questioned me about all the mail that came in, all the checks that I had on my desk that morning, he wanted to know if these were all in today's mail. And I explained to him no, and he said, why is that, and I went on further to explain to him that these all--these a lso are checks from the drivers from the night before.

JUDGE RIES: When was this; when did this happen?

THE WITNESS: On the 21 of August.

JUDGE RIES: This is after the Xerox machine?

THE WITNESS: Yes. This is after. I'd say in the morning.

Q Do you recall if he said anything else during that conversation?

A He wanted to know had I--did/I have anyother checks in my desk and I said yes, I did.

And I showed them to him, and he said, "Why haven't these checks been deposited?"

And I explained to him that these checks were sent with no references, therefore I could not apply the checks correctly. And that in order for me to do so, I needed inquiries from the computer, but the computer was not working at that time.

Q Had you worked on checks prior to August the 21st?

A Yes.

Q Is that part of your regular job?

A Yes.

Q Had Mr. Joseph Pinter Sr., ever questioned you before concerning that aspect of your job?

A No. Never.

Q During the conversatian about the checks, do you recall if Joseph Pinter Sr. said anything else to you, Ms. Lufker?

A Well, he wanted to know what I had done with the photo I had taken for Bill Hunt, and I gave it to him.. He left with it. I don't know where he went.

And about ten minutes later he came back and said I was to keep the copy and he wanted the original to give to Bill Hunt.

That's all I can recall about that morning.

Q Where did you work that afternoon, if you remember?

A Well, part of that afternoon I was still working on some of my checks. I had to make a few phone calls, and around, I guess it was about between three and three-thirty again I had no work to do with the computer being down, so the only supervisor on duty at that time was Catherine Turk on the first floor.

So I reported to her to ask her if I could possibly be of any assistance because I have no work upstairs.

Q And what did she say to you?

A She said that she would have to speak to Mr. Pinter first.

Q Now, you testified earlier that you had gone down and had approached Catherine Turk concerning work the day before; is that correct?

A Yes.

Q Did she check with Mr. Pinter Sr. at that time?

A No.

Q On August the 21st, after checking with Mr. Pinter, what happened?

What did Catherine Turk do?

A Catherine went in to Mr. Pinter's office and they both came out of the office, and Mr. Pinter wanted to know if I did asked the girls upstairs if they had any work for me to do, was I--why wasn't I speaking to the girls, if I did not like it here I knew where the door was.

Q Did he make any motion or gesture at that time?

A Just pointed to the exit door.

Q What did he do then?

A He just went back into his office.

Q And did you say anything to him before he went into his office?

A I recall asking him if the girls upstairs did not have anything for me to do, then could I come down and help Catherine Turk.

And he said, "Of course."

Q Now, what did you do after speaking to Mr. Pinter Sr.?

A I went upstairs and I asked Doris Miller if she had any work for me to do, sir.

Q And did she give you anything to do?

A Yes. She had me type some envelopes and take some photos.

Q Approximately how long did that take?

A Maybe fifteen, twenty minutes.

Q Did she have you do anything else?

A No. Because I don't know her work--she just was able to give me things like that.

Q Did you ask anyone else upstairs for work?

A Yes. Pat Ossenforth.

Q What did she give you to do?

A I believe I had to make some phone calls. That's all I did for her.

Q About how long did that take?

A Maybe another twenty, 25 minutes.

Q Did you have occasion to see Mr. Pinter again that afternoon?

A No, not that afternoon.

Q When--

A That-- This was in the morning when I went to Pat and Doris -- wait a minute, excuse me-- I'm sorry, that as win the afternoon, I'm sorry. This was the afternoon.

Q Now do you recall if you saw Mr. Pinter again that afternoon?

A Yes, we had met on the staircase. I was coming down the stairs and he was coming up.

Q Did he speak to you?

A Yes.

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Q What didhe say, if you recall?

A He wanted to know if I received any work from the girls upstairs, and I told him yes, I had.

And he wanted to know why I had not asked him before. And I replied, well, I really did not think that they needed my help, Mr. Pinter.

And he said to me, "Why didn't you open your mouth. You always seem to open it at the wrong tim4s."

Q And did you respond in any way?

A No, sir; I just left. I went downstairs and he continued up.

Q He did what? I'm sorry.

A He continued up the stairs and I continued down.

Q Did you see him at all th at day again?

A I really don't recall.

Q How did you occupy the rest of that day?

A When I finished with Pat's job-- Well, I received phone calls from customers asking them if I had received certain checks so that kept me busy some of the time.

Q Let me ask you this: Prior to the 20 and 21 of August, had you ever assisted Catherine Turk before?

A Prior to the 20th?

Q Yes.

A Yes, I did.

Q When was the most recent time prior to August 20, if you remember?

A I really cann't recall, sir.

Q Okay. On the earlier occasions--were there one or more than one occasion?

A I would say more than one.

Q Were you ever criticized for it or questioned for it before?

A No.

Q Did there come a time when you began to undergo a course of medical treatment?

A Yes.

Q Are you still undergoing that treatment at this time?

A Yes, I am.

Q When did you begin to undergo this treatment, if you remember?

A Sometime the beginning of August.

Q And at that time-- When did you go to the doctor's, during what time of the day?

A Usually 1:00 o'clock I believe my very first appointment was for one o'clock-- No, I believe it was for three o'clock.

Q Did you work that day?

A No. I did not work the first time I had an appointment. No.

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Q You did not work.

Now, can you place the date of that appointment?

A My first appointment?

Q Yes.

A I believe my very first appointment was August 11.

Q And you took the day off in order to go?

A Yes.

Q Did Pinter Bros. provide you with paid sick leave?

A No.

Q Following that first appointment, do you recall when your next appointment was?

A I believe it was September 10.

Q Well, do you recall if you had an appointment prior to that time?

A Prior to September 10?

Q Yes, but after August the 11? Let me ask you this: Do you recall having conversations with Charles Brown concerning your doctor's appointment, your various doctor's appointments?

A The one time I can recall I had a three o'clock appointment, I told Charlie that morning that I would be leaving around 2:30 to go to a doctor's appointment that I had at 3:00.

Q And what did he say?

A He said--

MR. BURSTEIN: Fix a date.

Q And what did he say?

A He said, "Okay." And at around a quarter after 2:00 he asked me when I would be leaving, and I told him around 2:30, and he asked me if I would be going to the doctor again. And I said possibly, if I had to be cauterized again.

And he said if I had to go to the doctor again I must take the whole day off.

Q Okay.

Now, this conversation that you just testified tok do you recall when that took place?

A I believe it was the last week in August or either September 10 I know I had a doctor's appointment. It had to be the last week in August, I believe.

Q Okay.

Now going into the month of September, do you recall if you reported to work on SepSember 9?

A That morning of September 9 I called up the office, I spoke to Charles Brown. I told him that I would be late, that I would be in before nine o'clock.

Q What time did you call, if you remember?

A About twenty after 8:00.

Q What was your usual starting time?

A 8:30.

Q And what did he say when you told him you would be late?

A He said to me, "Diane, what did I tell you?"

I said, "Charlie, what do you mean?"

And he said, "I don't think Mr. Pinter will let you work today. Call me back in five minutes."

I said to Charlie, "I want to come in. I will be there before 9:00. We'll see what happens when I get there, okay?"

And he said, "Okay."

When I--

Q Did you go to work?

A Yes. I was there about a quarter to 9:00. My time card was not in my rack--the time card was not in the rack. So I reported upstairs to Mr. Brown.

We spoke in the billing room alone. He told me I could not work that day because I was late, that my lateness and my absenteeism is terrible.

I explained to Charlie that I was here, why can't I work?

He said I can't let you work today because you cannot give me an eight-hour day.

Q Do you recall if he said anything else?

A I remember him saying he wasn't just referring to me; this applied to everyone in the office.

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Q Now--

A I went on to explain to Charlie that tomorrow, which was the 10th, I had a one o'clock doctor's appointment, can I come in?

And he said no, that I must take the whole day off, but to call up that morning.

Q Were you permitted to work on the 9th of September?

A No.

Q In your conversation with Charlie Brown, do you recall if he said anything else?

Do you recall if he said anything about Doris Bonadonna?

A Yes. He said, you know,"Diane, it's been very hard on me expecially since Doris Bonadonna is no longer with us,"and I explained to Charlie I realize that's been hard for him, so why doen't he let me work, why don't you let me work today.

And again he just replied, I cannot, because "you can't give me an eight-hour day."

Q Had you ever reported to work late prior to this?

A Yes.

Q And what would happen when you reported to work late?

A I was allowed to work.

Q Were you allowed to make up the time?

A Yes.

Q When?

A Well, usually during my lunch hour or stay an hour late after work, but usually had to make it in the--the time up in that same day.

Q Did you go in to work on September the 10th?

A Yes, I did report to work. But again my time card was not in the slot.

Q What did you do?

A I reported to Charles Brown upstairs.

Q And what did you say to him?

JUDGE RIES: About what time was this?

THE WITNESS: This was about twenty after 8:00, before 8:30. I start work 8:30.

JUDGE RIES: Okay.

Continue.

A I told Charlie I was here to work, "Can I work?"

He asked me if I still had to go to the doctor.

And I said, "Yes, I did."

He want ed to know why I did not go yesterday.

I explained to him that the doctor does not have office hours on Tuesdays, just Mondays, Wednesdays and Fridays.

I said to him, "Don't you think that if I could have gone to the doctor yesterday, that I would have?"

Charlie said he just could not believe that I cannot go another time.

I asked Charlie if he thought my work was not good enough; that I was lying to him, and he said no, he did believe me.

And he just went on to say that"I cannot let you work today because you cannot give me an eight-hour day."

Q What did you finally do?

A I just explained to Charlie that I wanted him to know that I did report to work today, and then I just left.

Q Do you recall when your next doctor's appointment was after that?

A September 24.

Q And did you advise Mr. Brown of that appointment before then?

A Yes, I did. I believe it was the 22nd of September.

Q And do you recall if you asked Mr. Brown if you could work?

A Yes, I asked Charlie if I could work. And he s-id no. I would have to take the whole day off.

Q What time was your appointment for on the 24th?

A I believe one o'clock, 1:15.

Q Did you report to work on the 24th?

A No.

Q Do you remember if you had a doctor's appointment that was cancelled?

A I did have a doctor's appointment on the 24, but I wasn't able to make it that day, so I did report to work. I reported-- My time card was in the slot, so I punched in. I reported upstairs to Charlie.

I explained to Charlie why I was not able to keep the doctor's appointment. And he let me work.

Q And following September 24, did you have another doctor's appointment?

A Yes, I did.

Q And do you recall when that was?

A October the 3rd.

Q What time was that appointment?

A I believe it was for one o'clock again.

Q Did you advise Charles Brown of that appointment prior to October 3?

A Yes, I did.

Q Do you recall when that was?

A I believe it was the 30, 30 of September.

Q What did you tell him at that point?

A I told Charlie that I have a doctor's appointment on the 3rd, can I work?

And his first remark was, are you filing

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charges. I just replied yes. He said, "We went through this before. You can't work."

He said he looked over my records fo4 1973 and 1974 and there's a pattern.

MR. BURSTEIN: There is a what?

THE WITNESS: A pattern.

Q Did he say what kind of pattern?

A He said that I have been out at least once a month. I just shook my head. He just wanted to say that no company would allow so much absenteeism.

Q And what did you say?

A I just explained to Charlie that if I had to go to the doctor, then I must go, that I felt that I have not been out that much, and I went on to say that I'm sure other people in this office have gone to the doctor, and, you know, they weren't told not to come in.

And Charlie said the only reason for that being is that they tell him five minutes before they are going to go to the doctor.

He says, "What are we supposed to do, chain them to the chairs?"

Q Do you reçall anything else he said on that occasion?

A No, I don't.

Q Ms. Lufker, do you recall anything else he said on that occasion?

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A No, I don't.

Q Do you recall if he said anything about making up work?

A I remember him telling me he felt there was many a time that I was late or I had to leave early, that I would have made up the time, and that I never did.

And I explained to Charlie that I am sure if I did not make up the time, it was because I just could not give it to them in the same day, I could not make up the time in the same day, or I just wasn't able to make up the time.

Q Now, prior to the time that you have testified to here that you started going to the doctor, had you ever gone to the doctor before and taken time off from work in order to do it, left in the middle of the day?

A Yes.

Q Were you permitted to work on that day that you were going to leave in the middle?

A Yes.

Q Had you advised him of that in advance?

A I usually tell Charlie or whosoever my supervisor at that time in the morning, it is usually the morning.

Q And you were permitted to work?

A Yes.

Q Were you ever given any explanation as to this change

A Right.

Q So you might come back at 3:00 or 3:30 or maybe 4:00; is that correct?

A Yes.

Q All right.

Now-- Incidentally, you are working now, aren't you?

A Yes, I am.

Q You also said there was a question about your record, your employment record.

Would it refresh your recollection that If I were to tell you that despite the fact you testified as to one, two, three and four doctors' appointments on which you were absent, you were absent sixteen times in the last eight months--eighteen times in the last six months?

A In the last six months?

Q Would it refresh your recollection if I were to tell you you were absent 18 times in the last six months? You had four doctors' appointments?

A I have had more than four doctors' appointments. I told you--I'm not allowed to work.

Q Since August.

A Any day that I take--

Q You told us there were four days. You said August 11. You testified that--to August 11, September 10?

JUDGE RIES: I would-- I will permit the question, but the answer is that noe one ver told it to her.

MR. MANGAN: To her, that's right.

Q (By Mr. Mangan) To your knowledge, has any other employee of Pinters been permitted to work during the course of the day up until the time for the need of medical appointment, to satisfy a medical appointment since August 11, 1975?

MR. BURSTEIN: She answered she did not know.

JUDGE RIES: Do you know, Miss--I thought you answered you did not know either.

A Not to my knowledge, sir.

Q Prior to August 11, 1975--withdrawn.

Prior to September 9, 1975, to your knowledge, are employees permitted to work those hours up until the time that they would leave for medical appointments?

MR. BURSTEIN: I don't know how she can testify to that.

She is not qualified.

JUDGE RIES: She might know.

You can answer, if you know.

A I believe there might have been a time when Pat Ossenfort had to leave for a doctor's appointment.

Q How would you know that?

A I believe I asked one of the girls in the office, I do not recall who because I do recall Pat leaving, and I know this was happening to me so I wanted to know, you know, why was Pat leaving, because I knew she had left.
And I cannot recall specifically who told me but--

MR. BURSTEIN: I am going to object to it, your Honor.

JUDGE RIES: That's enagh. That's hearsay.

THE WITNESS: Okay.

Q (By Mr. Mangan) My question to you, though, Miss Lufker, is before September 9, to your knowledge did anybody else other than yourself leave during the course of the day for a medical appointment and were they permitted to--naturally to work during those hours prior to the time that they left for work?

MR. BURSTEIN: She has testified she does not know.

A Not to my inowledge.

Q But you know that you were allowed before September 9 to leave and go to the doctor and were permitted to work those hours up until the time of your appointment?

A Yes.

Q To your knowledge, prior to September 9, 1975, were other employees permitted to leave during the course of

So, this was a few minutes before 12 and maybe five minutes to -- about two minutes to 12 and she said, I don't feel too good. I think I'll take the afternoon off.

I said, all right.

And, that was it.

Q Now, did she subsequently return with a letter, which she sought to withdraw her oral resignation?

A Yes, she did the following Monday.

Q Did you have a conversation?

A Yes.

Q Where?

A In my office.

Q Who was present? Do you recall?

A I don't recall whether anyone else was present, because she came down to see me, and I said I'd have to give it a little thought.

I called her down the next time to give her my decision and when I did I said, you know we can't have people running around here, saying I quit, I give you two weeks notice.

And, from what I hear, you've said this outside for three other girls to hear, besides the two you went to lunch with, including my secretary.

And, you know, I can't be placed in that position, taking you back, because it would look as though you had something on me, and I had to take you back.

She said, okay.

Q Was that the end of the conversation?

A That was the end of the conversation.

MR. BURSTEIN: So that we can put together all the testimony, I would suggest we get into the Lefker situation, rather than treat each one separately, Judge.

JUDGE RIES: It's your inning.

MR. BURSTEIN: I was just addressing myself to counsel.

Q Now, can you tell us what happened with Diane Lefker?

A Well, I talked to her the day before because she was in -- you see, Doris didn't come in that Thursday.

Q On August 21st?

A On the 21st.

But I didn't talk -- the first time I talked to Diane Lefker was when she went to the photostat machine.

And, she took out two adding machine tapes. They're about this wide (indicating), maybe a little wider and about this (indicating) long.

And there was two of them, printing on one side.

She had them stapled together.

I said, "What are you photocopying?"

She said, "These."

I said, "What for?"

She said, "Bill Hunt upstairs needs them."

I said why not take them apart and photograph them at one time instead of using the machine twice.

Turn them over.

That was an awful silly waste of time and money.

So she pulled them apart and did it.

Then in the afternoon Cathrin Turk, the advisor on the ground floor said, "You know, Diane is down again here saying there is no work for her upstairs."

I said, let me talk to her.

So, I went out to the office and I said to Diane I understand you told Cathrin there's no work upstairs and you want to help her down here.

She said, that's right.

I said, did you ask any of the girls whether you could help them?

She said, no, I didn't.

Well, I said look if it's going to be your attitude here not to talk to the girls the door is open and you can go out.

You can either do that or go upstairs and see if you can find some work.

She went upstairs and I don't recall seeing her the rest of the day.

Q Did you have any further conversations with her?

A Not to my recollection.

MR. BURSTEIN: I have no further questions of this witness.

CROSS EXAMINATION

Q (By Mr. Weinrich) Mr. Pinter, you were present at the hearing in this matter on August 20th, 1975, a Wednesday, is that correct?

A Yes.

Q Now, when we had the last conducted hearing in this matter during the month of August you were present at the hearing on August 20?

A Yes, I was.

Q And you were here during that entire day, is that correct?

A I believe so.

Q Did you return to the office at all that day?

A I think we just stopped in to check things out. I don't know.

But, I know we went out to dinner that night.

Q How did it come to your attention that Doris Bonadonna assisted Cathrin Turk on the 20th of August?

A I'm not sure whether it was my secretary or Mrs.Turk or Doris Miller.

One of the three must have told me.

Q And upon it being reported to you, I take it that you made an investigation, what took place on August 20th?

Q So, it's quite possible that Doris Bonadonna could have been asked to help Doris Miller and refused, according to the information that you have?

JUDGE RIES: This is very conjectural.

MR. WEINRICH: I'm withdrawing the question.

Q Did you advise Doris Bonadonna that it had been reported to you that Doris Miller had a pile of work to do and that she should have helped Doris Miller?

A I said to her that I understand the two girls up there on the 20th were snowed under.

I didn't speak to either one of the girls upstairs to ask them how much or what work they had.

Q I see.

So, who advised you they were snowed under?

A I think there again my secretary gave me this third or fourth-hand.

And the reason I didn't ask anyone was, because I wanted to wait until Charlie Brown came back Monday to find out what his instructions were before he left for vacation.

Q Did you ask Doris Bonadonna what instructions she was given by Charlie Brown?

A No.

Q Did she tell you?

A No.

A I don't know the exact words, so I'm not going to try.

Q Do you recall the circumstances you were referring to?

A I don't think I made the statement.

Q I didn't say -- you were referred to, or your son referred to -- did it come to your attention that girls walked out of a restaurant [illegible] the same time that other girls walked into a restaurant?

A I think my secretary mentioned that to me.

Q Do you recall the circumstances? Who was in the restaurant and who entered the restaurant and who walked out?

A No, I do not.

Q Was your secretary one of those that was either in the restaurant that walked out or one of those that walked in and caused the others to walk out?

A I don't know, but I don't believe so.

Q So your secretary really becomes a great source of information for you as to what takes place, both during working hours and nonworking hours at the Pinter plant?

A Yes, and it should be that way too.

Q So that when conversations take place or incidents take place in restaurants or around the office perimeters, as well as the general office area, she brings back to your attention?

A If she feels like it.

Q If she feels it is important?

A Yes.

Q If she feels it is something that involves your operation?

A Maybe it doesn't have to be important, just the way she feels.

Q She brings things to your attention that take place in the office or outside of the office if she feels it concerns the Pinter operation?

A Possibly.

Q Not possibly, is it a fact that she does this?

A Well, on occasion, yes.

Q Doris Miller, she works upstairs in the same area with Doris Bonadonna, doesn't she?

A Yes.

Q What was Vera Barber's job before she was terminated?

A I don't know. She worked up in that department but -- I don't keep such close track of that department, because I feel that Charlie Brown is in charge and if everything is going smoothly I don't want to know anything about it.

Q Was any hiring done during the months of August and September dealing with the general office?

weeks preceding August 25th, when you commenced your vacation, did you get the people together and give them oral instructions?

A Yes.

Q What instructions did you give them?

A Basically, individual instructions to each one depending on their job.

Q Did you have any occasion to give individual instructions to Doris Bonadonna?

A She was to help Doris Miller in learning her job.

And she was to be free in case someone was out sick, or to appear in court, as I was aware one person was to appear in court.

Q Which person was that?

A I believe it was Pat, I'm not sure, and also Diane Lefker.

At the time, about an hour previous to my issuing instructions, she told me she was going to be out that Monday.

Q August 21st?

A I believe that was the date.

Q Now, you instructed her to assist Doris Miller?

A That was her main job and then she would have to cover for anyone that was out.

Q Did she do any work in connection with the computer?

Q What did they tell you?

A Well, that she had resigned and I had asked Mr. Pinter, because Doris was always a very good worker, Mr. Pinter, I had told him a number of times that she was a good worker.

She was an asset to my department and I had asked him if he had tried to talk her out of it and he said yes.

So, I said nothing much else you can do.

Q Were you aware of the fact that she subsequently attempted to withdraw her resignation?

A She told me that morning when she came in. I was only there a few minutes.

Q Did you mention that to the Pinters?

A I don't recall the stages, which had happened. I think she spoke or called or I'm not sure that there was a letter involved.

Q Did you ask the Pinters what their attitude was to the request of the withdrawal or retraction of the resignation?

A No, I wasn't there.

As a matter of fact, Mr. Pinter asked me, what would you do?

I said, well if you try to talk her out of it I don't know what else you could do.

Now, I understand that Mr. Pinter said she made a scene about it.

Q Well, did he ask you what you would do if the girl had resigned in your presence and then wroteyou a letter withdrawing the resignation?

A No, he didn't say that, no.

MR. BURSTEIN: I have nothing further.

CROSS EXAMINATION

Q (By Mr. Weinrich) Do you recall how long before you went on vacation you gave these individual instructions to employees as to the type, what their duties would be while you were away?

A It would always be the last day.

So it would be a Friday except for the case in March where I took the Friday as an extra day because I was going to Florida.

But, it was normally the last day I was going to be there.

Q Let's concentrate onyour vacation between Monday, August 20th.

August the 20th was a Wednesday. Would it be correct that you went away on August the 18th?

A It was the 18th through the 24th.

Q So, you would have given your instructions on the previous Friday, August the 15th?

A Yes.

Q Now, how many girls did you have working in the department at that time?

A At that time, five.

Q Who were they?

A Doris Bonadonna, Diane Lefker, Clare Dorr, Pat Ossenfort and Doris Miller.

Joan Buckley is a tempo, she would also be included.

Q Now, what was Doris Bonadonna's particular job?

A She was basically breaking in Doris Miller on bookkeeping type work.

Q And part of your instructions to her before you went on vacation was that she should assist Doris Miller?

A Yes. That was her main function.

Q When you were there as well as when you were out?

A Yes.

Q Had you ever told her that in assiting Doris Miller, she should attempt to make sure that Doris Miller does the work herself for the most part, so she would learn the job?

A Oh, sure.

Q You didn't want her to take over for Doris Miller?

A Now, we're losing track.

I don't follow that question.

Q You wanted Doris Miller to larn the job herself?

A Correct.

Q Was Mrs. Bonadonna acting as a teacher or as a helper?

But I don't know if it's morning or afternoon.

Q You can't tell?

A I would say it's afternoon because she never came back after going to the doctor's appointment.

Q So what you're saying is that the time missed would be in the afternoon?

A I would say so, yes.

Q Now, do you recall when your next conversation, your second conversation was with her concerning medical appointments?

A She -- well, she seemed to me amazed that I wouldn't let her work.

Q When did you tell her you wouldn't let her work for the first time?

A September 9th.

Q That was the first time you told her that?

A No, I told her she couldn't work but I told her previously that there would be no more half-days.

Q When was that?

A That was during the week of September 1st to September 5th.

I don't know which day.

Q Do you know how many days she took off or how many half-days she took off before that?

A Sure. I got the records out and showed it to her and

I had it in my hand.

Q And that shows that she was permitted to work up until the time she left?

A Correct.

Q Do you know if that's a medical appointment she went to?

A I think every one was a medical appointment.

I don't recall any other type of --

Q Except for lateness?

A She was late a good deal.

Q She was late a good deal?

A Yes.

Q But on September 9th she was late and you told her she couldn't work?

A To me, when I say late -- not two or three minutes. But if she comes in or calls up and says she'll be an hour late, to me an hour late is a half a day and she's not going to be permitted to work.

Q Had she ever been that late before?

A No.

Q Now, on that occasion when she told you she had a doctor's appointment for the next day --

A At thatvery time, yes.

Q -- do you recall what time the appointment was for the next day?

A I don't recall, no. No, I don't recall.

I was so upset that she could turn around and say I have a doctor's appointment the next day, I couldn't believe it, actually.

Q What did you tell her?

A That she wouldn't be allowed to work.

Q Did she come in the next day also?

A She did come in and I told her not to.

But she came in anyway, and I told her she couldn't work.

Q Was there work available for her?

A Sure.

Q In fact, you still had a lot of work in your department?

A That's correct.

Q That was on September 10th?

A Yes.

Q Do you recall when her next doctor's appointment was?

A Well, the record indicates that she was out on October 3rd.

I could look it up on the absentee report.

I don't recall when it was.

Q Do you have the absentee report with you?

A They should be here.

No, I'm sorry. I have the wrong folder.

Q She was absent on October 3rd.

Do you recall if she told you prior to that date that she was going to be absent?

A Yes, I'm sure she did.

On every occasion that she had, after this point in time, after September 9th she wanted to know if she could work and go to the doctor's during the day.

I told her, no.

She never came back to me with any information as to what she was going to make any arrangements to get different hours for the appointments.

Q When did you tell her to do that?

A Well, the week of September 1st to the 5th.

I said, talk to your doctor to try to get other hours. It's too much. You're abusing the attendance principle.

And we can't have you coming and going as you please, so try and make other arrangements.

She said she would.

She never came back to me and said she could or she couldn't.

Q All she did was tell you that she would be going?

A Correct.

Q Did you ever have occasion to discuss the filing of charges with the Labor Board with Diane Lefker?

A Recently, about 10 weeks ago.

Q Never prior to that time?

A Never.

Q When were you first advised that she filed charges?

A When the letter came from the board.

Q Who advised you?

A I think either Bob Pinter or Joseph Pinter showed me the letter.

Q Did other people in your department ever come in late?

A Yes.

Q In excess of two minutes?

A Yes.

Q An hour?

A Going back, yes.

Q Have they been permitted to work?

A Yes.

Q Has anybody else in your department ever undergone a course of medical treatment that involved several visits to a doctor?

A Yes.

Q They have?

A Yes.

Q Who?

A I recall Vera Barber had a number of doctor's appointments.

Q During the day?

A Yes.

I spoke to her about making other arrangements. I didn't have any problems after that.

Q Was she permitted to work part time or part of the day?

A Prior to the time I warned her, yes.

Q Were you able to get a replacement for Diane Lefker on the full days she took off?

A No.

When you say replacement, someone did her work but that left the other girls backlogged.

To me that's not a replacement.

Q But, it was your position that even if you could have seven hours from her you weren't going to take it?

A Not under the circumstances.

Q And that included lateness as well as medical appointments?

A Let's put it this way, if she came in and punched in two or three or four minutes after, I probably never would have known.

I don't check her card every day.

Q But because she called and told you she was going to be an hour late --

A After I just finished talking to her about working full days.

the other girls in my office and told them there would be no more half-days.

Q When was this?

A This was in September.

MR. BURSTEIN: Nothing further.

JUDGE RIES: Thank you very much, Mr. Brown, you're excused.

MR. BURSTEIN: I have another witness I can put on maybe until 1 o'clock.

MR. MANGAN: Well, are you going to put on this girl that's outside?

MR. BURSTEIN: Yes.

JUDGE RIES: I suggest we save time time. We'll go on.

Whereupon,

CLARE DORR

called as a witness, having been first duly sworn by Judge Ries, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Burstein) Would you please state your full name and address.

A Clare Dorr, 368 Belmont Avenue, North Babylon, New York.

Q What company are you employed by, Miss Dorr?

A Pinter Brothers.

A Yes.

Q This was on Wednesday, August the 20th?

A Is that when the 20th was?

Q Yes. The 20th was a Wednesday.

A Yes.

Q What did he say to you on the phone?

A He said to me, what happened upstairs?

And, I said to him, the computer broke down, I'm having trouble with the computer.

And he said, I don't mean that.

So then I said, what do you mean?

And, he said, what happened that the two girls went downstairs to work?

And I said to him, they went downstairs to work.

Q That was all that was said?

A Yes.

Q Did he tell you how he knew they went downstairs to work?

A I asked him if he got the letter.

Q The letter --

A The note.

Q Whaqt note?

A Doris Miller had written a note.

Q Who did Doris Miller write a note to?

A She wrote down that Doris Bonadonna refused to help her with the work.

Q How did you see the note?

A Doris showed it to me.

Q What did she do with it, if you know?

A I don't know.

Q But Mr. Pinter said he had seen the note?

A No, he didn't say he had seen the note.

He asked me what happened upstairs.

Q Did he tell you how he knew something had happened?

A Look, I was still upset over the computer.

I wasn't going to go into detail about little things.

I just said to him if he had gotten the note, that's all I asked him.

Q What did he say?

A I don't remember what he said.

Q Had you spoken to Doris Miller?

A Sure, I speak to her. I work with her.

Q Had you spoken to her about the note she had written?

A She just showed me the note she wrote.

Q Did she ask for Doris Bonadonna to help her in her presence?

A Doris Bonadonna knew she was to help Doris Miller.

Q Did you see Doris Miller ask Doris Bonadonna to help her? Did you hear her ask her?

A No.

A The night of the election but after, about 9 o'clock, 10 o'clock.

Q Where did that take place?

A In the LaGrange.

Q What is the LaGrange?

A It's a restaurant.

Q Who was there?

A It was Joan Buckley, Dolores Fletcher, Doris Miller, Bob Pinter, Mr. Pinter's other lawyer and Mr. Pinter and myself.

MR. BURSTEIN: The other lawyer is not Mr. Burstein.

Q What were you doing there?

A We went out to eat.

We were hungry.

Q Did you have anything to drink there?

MR. BURSTEIN: I object.

Q Did you have anything to drink there?

JUDGE RIES: Sustained.

Q At any rate, Mr. Pinter invited you out? The whole group of you?

A Yes, we stayed for the results.

Q And after the results he took you all out to dinner?

A Yes.

Q And during the course of that meal, he indicated his disappointment in Doris Bonadonna because she had turned on him by endorsing the union and signing an authorization card, is that correct?

A No -- he never mentioned her signing a card.

Q What did he mention?

A He just was very hurt by her actions.

Q Did he express what actions there were?

A No.

Q Did you interpret from her statement -- and you brought this to Doris Bonadonna's attention, the day following the election?

A Right.

MR. MANGAN: I have no further questions.

REDIRECT EXAMINATION

Q (By Mr. Burstein) Did he express any disappointment with any other people who had voted for the union?

A No. Not to my knowledge.

MR. BURSTEIN: No further questions.

JUDGE RIES: You're excused. Thank you.

We will be in recess until 2:30 for lunch.

(Whereupon a lunch break was taken)

JUDGE RIES: Back on the record.

DIRECT EXAMINATION

Q (By Mr. Burstein) Would you please state your full name and home address?

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

GC #1(F)

PINTER BROS., INC.

Employer

and

CASE NO. 29-RC-2888

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Petitioner

PINTER BROS., INC.

Respondent

and

CASE NO. 29-CA-4281

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Charging Party

REPORT ON OBJECTIONS, ORDER CONSOLIDATING CASES AND NOTICE OF HEARING

Pursuant to a petition filed on January 20, 1975 and a Decision and Direction of Election issued on February 28, 1975, an election by secret ballot was conducted on March 26, 1975, in a unit of all full time and regular part time office clerical employees employed by the Employer at its Carll's Path, Deer Park, New York location, including the secretary to the General Manager, but excluding drivers, helpers, warehousemen, maintenance and confidential employees, guards and supervisors as defined in the Act.

The Tally of Ballots served upon the parties following the election showed the following results:

Approximate number of eligible voters........	35
Void ballots................................	0
Votes cast for Petitioner.................	14
Votes cast aginst participating labor organization...................	18
Valid votes counted.........................	32
Challenged ballots..........................	1
Valid votes counted plus challenged ballots.........................	33

Challenges are not sufficient to affect the results of the election

A majority of the valid votes counted plus challenged ballots has not been cast for Petitioner

Thereafter, on March 31, 1975, the Petitioner filed timely objections to the conduct of the election alleging as follows:

1. Since on January 17, 1975 (subsequent to the execution of authorization cards by unit employees and three days prior to filing the petition in this matter), and continuing to the date and time of the election, the employer caused an atmosphere of fear among its unit employees and interfered with their freedom of choice by unlawfully affecting the tenure of employment of Debbie Gulbrandsen, Jayne Healy, Vera Barber and Beatrice Pagliarulo because of their concerted assistance on behalf of petitioner.

2. On January 17, 1975, Joseph Pinter, Sr., approached all the part-time, night, employees and inquired whether they had been speaking to any of the full-time, day, employees about representation by petitioner. Within minutes therafter the employer took its unlawful action against the four full-time employees. The part-time employees were so intimidated by this, and the misrepreesentations by the employer of their status, should petitioner be successful, they were unable to exercise their free choice in this election.

3. The election was conducted in an atmosphere of fear, coercion, threats and intimidation engendered by the unlawful conduct of the employer in refusing Debbie Gulorandsen, Jayne Healy, Vera Barber and Beatrice Pagliarulo the opportunity (by a steel fence, armed guards and german shepherds) to cast ballots in the election. Such conduct upsets the laboratory conditions in which such an election must be conducted.

4. On March 24, 1975 (two days before the election) the employer held separate meetings with the full-time, day, employees, and the part-time night employees. At those meetings the employer materially misrepresented the effect of petitioner being successful in the election and engendered fear by threatening unit employees with lay offs. The full-time, day, employees were told that work normally performed by them would be transfered to the part-time, night, employees causing lay offs among the full-time, day, employees. That night, the employer threatened the part-time, night, employees with being bumped by full-time, day, employees with less payroll seniority. The employer stated that this conduct against the part-time, night, employees would be permitted by the petitioner because it did not want to represent part-time employees.

5. The employer in each of its three letters to the unit employees clearly conveyed the message that it was futile for them to select petitioner as their bargaining representative for the purpose of improving their conditions of employment and that the election of petitioner could only bring strikes and loss of jobs. 1/

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be made of the objections. During the investigation the parties were afforded full opportunity to submit evidence bearing upon the issues. The undersigned also caused an independent investigation to be made. The investigation disclosed the following:

Objection Nos. 1 & 2

Inasmuch as objections Nos. 1 and 2 relate to alleged objectionable conduct which occured prior to the filing of the petition in the instant case on January 20, 1975, I will overrule them. 2/

Objection No. 3

Objection No. 3 relates to the refusal of the Employer to admit prospective voters Debbie Gulbrandsen, Jayne Healy, Vera Barber and Beatrice Pagliarulo to its premises during the polling hours on the day of the election.

1/ The three letters dated February 19, March 18 and March 25, 1975 are attached as Appendix A, B and C respectively.

2/ The Ideal Electric and Manufacturing Company, 134 NLRB 1275.

The facts are not in dispute . The election herein was scheduled to be held on March 26, 1975 from 5 p.m. to 7:30 p.m. at the Employer's premises. At about 4:55 p.m. on the day of the election prior to the opening of the polls, the Employer, by Joseph Pinter Sr. advised the Board Agent and Petitioner's attorney Warren Mangan that pursuant to advice of counsel, the Employer would not permit the four individuals on the premises. Despite the request of the Board Agent that the four individuals be permitted on the premises for the purpose of voting and his and his admonition to Joseph Pinter that his refusal to permit them to enter might constitute valid basis for objections to the results of the election, the Employer was adamant in its position. At about 6:45 p.m., the four prospective voters came to the plant entrance gate for the purpose of voting and were refused admittance by Robert Pinter, the Employer's President.

The Employer contends that it had permanently terminated the employment of Gulbrandsen, Healy, Barber and Pagliarulo as of January 17, 1975, that the petitioner at no time during the processing of the representation case herein, raised the issue of their eligibility, including the omission of their names from an eligibility list given the Petitioner at a heating herein, on February 10, 1975, as well as from the Excelsior list subsequently supplied the Petitioner. The Employer further agrees that Objection No. 3 as well as the unfair labor practice charge filed by Petitioner against the Employer, on March 31, 1975, in Case No. 29-CA-4281 referred to infra alleging inter alia the discriminatory discharge of the above four individuals were afterthoughts by the Petitioner after it had lost the election.

On this issue of excluding individuals from the polling place, the Board has pointed out that the "Board's challenge procedure generally guarantees the right to every individual who asserts other than a totally frivolous claim to employee status to appear at the polls and cast a ballot... [and the issue of employee status] is clearly one of those kinds of issues which is to be determined by the Board upon the employer's challenge to their ballots. 3/ Accordingly, the Board has declared that excluding prospective voters from the polling area and depriving them of an opportunity to voter under challenge usurps the Board's authority, interferes with the orderly election process and is therefore objectionable. 4/ However, in view of the Employer's contentions for denying the above prospective voters permission to enter the plant to vote and the factors surrounding that conduct, and in view of the fact that the same conduct is the subject of the complaint issued on June 4, 1975, in Case No. 29-CA-4281, I will not at this time rule on Objection No. 3. Rather, I shall consolidate it with Case No. 29-CA-4281.

Objections Nos. 4 and 5.

The Petitioner alleges that both in meetings held on March 24, 1975 with employees, as well as in letters dated February 19, March 13 and March 24, 1975 the Employer, through Joseph Pinter, Sr., Chairman of the Board, and Robert Pinter and others, threatened employees with lay-offs, loss of pension benefits, establishment of job classifications and other reprisals if they became or remained members of the Union. The Petitioner also alleges that the referred to letters conveyed the message.

3/ Ace Letter Service Co., 187 NLRB 581.
4/ Ibid.

that it was futile for them to elect Petitioner as their bargaining representative for the purpose of improving their conditions of employment and that selection of Petitioner would only bring strikes and loss of benefits.

On March 24, 1975, the Employer held two meetings of employees on its premises, one for the day shift and one for the night shift. Joseph Pinter Sr. addressed both meetings reading from notes. Petitinner's witnesses assert that Joseph Pinter Sr. stated at these meetings that if the Employer and Petitioner could not come to an agreement there would be lay-offs and men would be out of work, that Pinter Sr. affirmed day shift clericals may have to be transferred to the night shift if the union comes in. Petitioner's witnesses also assert that Robert Pinter stated there would be job classifications if the Union came in and new hires would be obtained in those classifications rather than training current employees. These witnesses also assert that company officials Joseph and Robert Pinter remained silent when an employee expressed his fears of losing the company pension if the union came in.

The Employer takes the position that nothing said in the speeches or letters was objectionable; that all the statements fall within the protection of 8(c) of the Act. Moreover, Pinter Sr. specifically denies stating there would be lay-offs if the Union came in. Rather, he asserts he stated that if the parties failed to reach an agreement the Union could strike which could result in loss of business and subsequent loss of jobs. The respective Company officials either deny or do not recall making the other statements attributed to them.

The evidence adduced during the investigation of Objections Nos. 4 and 5 raise substantial and material factual issues, including issues of credibility, which issues can best be resolved by a hearing.

The unfair labor practice charge in Case No. 29-CA-4281, also alleged that the Employer violated the Act by conduct described in Objections Nos. 4 and 5. Inasmuch as those allegations are set forth in the above complaint as violations of Section 8(a)(1) of the Act, I will consolidate Objections Nos. 4 and 5 with Case No. 29-CA-4281.

NOW THEREFORE, the undersigned Regional Director, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

IT IS HEREBY ORDERED, pursuant to Series 102.33 of the National Labor Relations Board Rules and Regulations, Series 8 as amended, that Cases Nos. 29-CA-4281 and 29-RC-2888 be, and they hereby are, consolidated for purposes of hearing, ruling, and decision by an Administrative Law Judge with respect to the allegations raised by the complaint and by Objections Nos. 3, 4 and 5 and that thereafter Case No. 29-RC-2888 be transferred to and continued before the Board in Washington, D.C., and that the provisions of Sections 102.48 and 102.69(e) of the above-mentioned Rules shall govern the filing of exceptions.

PLEASE TAKE NOTICE that on the 28th day of July, 1975, at 11:00 a.m. at 16 Court Street, Fourth Floor, in the of Brooklyn, State of New York, a Consolidated hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the issues raised by the Complaint in Case No. 29-CA-4281 and Objections Nos. 3, 4 and 5 filed in Case No. 29-RC-2888, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

Dated at Brooklyn, New York, this 20th day of June, 1975.

Samuel M. Kaynard
Regional Director
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

APPENDIX A

MAIN OFFICE:
CARLL'S PATH
DEER PARK, L.I., N.Y. 11729
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TEL. 212-925-5161
TEL. 212-226-6740

Pinter
Truckmen-Warehousemen
NEW YORK - LONG ISLAND - NEW JERSEY
DAILY - SERVICE - DIRECT

February 19, 1975

To Our Employees:

I am sending this letter to you to give you some straight facts about the present Union drive.

I know that there are all kinds of rumors, misrepresentations and unrealistic promises being made. To begin with, every employee has the right to join or refuse to join a Union. That right belongs to you and no one has the right to influence you or to mislead you.

We do not think that you need a Union, and we do not think a Union can do anything for you. From time to time, we will be writing to you and speaking with you to tell you why. Do not be fooled into thinking that merely because a Union promises certain benefits, they automatically are given to you. Don't be fooled into thinking that having a Union guarantees you a job.

Now, for some facts:

1. Our Company pays wages and gives benefits which are as good, if not better, than the benefits given by any trucking company in this area.

2. The turnover of employees at Pinter Bros., is lower than a large majority of trucking companies. There is a reason for it. The reason is that working conditions at Pinter Bros. are as good, if not better, than anywhere else.

3. Despite the fact that there is a recession and tens of thousands of workers have lost their jobs in this area, we have tried to keep everyone working. You know from your own experience that we have not laid-off office employees during slack periods. Pinter Bros. thinks it owes an obligation to employees to give them job security. No Union can do as well.

4. Union organization frequently produces strikes and loss of wages. Merely because a Union wins an election does not mean that an employer must sign a contract. An employer must bargain in good faith. He does not have to surrender to Union demands.

If the Union wants an election and makes economic demands which the employer cannot meet, there is a strike, or the employer finds ways to replace workers and reduce the work staff. Those who remain Union members are given the privilege of paying Union dues and assessments, even though the Union can do nothing for them beyond what the Company is willing and able to do.

5. Pinter Bros. recognizes that there may be grievances. You know from your own experience that if there are two or more people in an office, there will be, from time to time, disputes, conflicts and grievances, but we have tried to deal with these in a decent and responsible way and we will continue to try to handle all grievances. If there have been grievances which have not been settled, we will do our best to see that the reasons for grievances will be eliminated.

6. You know, as a matter of fact, that each of you has always been able to discuss any problems you have with me, Mr. Jacoby or my father at any time. As a matter of fact, I don't even have an office, and I have always been available to you.

We do not have a closed door policy at Pinter Bros.

ALL OF THESE ARE FACTS WHICH YOUR OWN GOOD INTELLIGENCE CAN VERIFY!

Now, you have heard that Local 807, which represents truck drivers, filed a petition with the National Labor Relations Board to act as your bargaining agent. We think we know what started it.

In every company, there are one or two people who are disgruntled and who do not care much whether your job is safe or not; who are not interested in the welfare of the other employees, and resort to all kinds of disruptive tactics. One of the favorite tactics is to call in a Union, to frighten the other employees and to spread malicious lies.

Here is the simple truth!

You all know that office employees make personal telephone calls. To be candid with you, Pinter Bros. does not encourage this. It is simply not fair for an employee to make personal calls during working hours except in emergency situations. I am sure none of you would like me to come to your house and use your telephone for my business calls.

Nevertheless, we recognize that personal calls are made, and frankly we shut our eyes to this if the calls are reasonable in number and in duration.

Ask yourself this question: Is it fair for any single employee, who is working with you, to make 5 to 10 calls per week, some of which were up to 15 minutes and longer? If you ran a business, would you like that? If your family owns a business, would you like the idea of employees making personal calls up to 15 minutes and longer at the expense of your family?

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And suppose that in addition to the outgoing calls, there were 5 or 10 incoming calls. Are we unreasonable if we think this is poor practice?

You realize, as I do, that you are entitled to a fair rate of pay. The Company is entitled to a fair day's work. If you went into a store and you paid $10 for 3 items, and the storekeeper delivered 2 items, wouldn't you be pretty angry about that?

The same thing is true in an office. If an employee receives $180 [illegible]ours work, isn't it reasonable to assume that the Company is entitled to get 40 hou[illegible]rk and not 35 hours or less? If the employee does not give the Company a fair da[illegible]s work, then the Company's economic position declines, and your own job is threatened.

You know very well that when costs begin to go up, a Company can only survive by cutting costs. In a trucking business, the cost of labor is the highest cost we have. There is a rule that says that labor costs for a local trucking company cannot exceed 60¢ of each $1.00 revenue. Once you get above the 60¢, the company begins to lose money and jobs are lost.

Now, if an employee who is hired to work 40 hours, actually works 35 hours or less, then it is obvious that she does not have enough work. If this happens throughout the Company, the Company must discharge some of the employees because it is obvious that a lesser number of employees can do all the work needed.

We discharged two employees because for one thing they abused the telephone privileges. Each of you can come and look at the telephone records at your convenience.

There will be an election. You will be given all kinds of promises. A handful of employees will be trying to persuade you to vote for the Union. They won't tell you the disadvantages of Union membership. They won't tell you about the dues, assessments and strikes, and the loss of jobs.

They won't tell you that a Union can't force an employer to pay more than the employer can afford to pay; otherwise the employer is driven out of business and jobs go down the drain!

As the time for election comes near, we will communicate with you again, and hopefully we can have a meeting to discuss all of the problems.

Sincerely,

Robert J. Pinter

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APPENDIX B

MAIN OFFICE:
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Pinter
Truckmen-Warehousemen

NEW YORK - LONG ISLAND - NEW JERSEY
DAILY - SERVICE - DIRECT

March 18, 1975

SECOND LETTER

TO: OUR EMPLOYEES

Some time during the week of March 24, 1975, you will have a chance to vote for your future with Pinter.

The National Labor Relations Board will set up a date for an election. Your vote will be secret. No one knows how you will vote and no one can tell you how to vote. THIS IS YOUR RIGHT. But when you vote, remember that your future, your job and your family's interests are involved in the election.

Between now and the date of the election, the Union and a handful of employees who are acting as agents for the Union, will make all kinds of promises. A union election is like a political election. Unions, like politicians, make all kinds of promises. The question is: CAN THEY DELIVER?

Before each political election, the candidates promise more jobs, lower taxes, better services. Look at what happened in New York! Did a single politician fulfill his promises?

And you can ask yourself, will the Union fulfill the promises it makes.

Now, you know that two employees who were discharged for cause began to stir up trouble because they had no interest in your job. They don't care about your family or your future. If the two employees cared for their jobs, how do you explain the fact that one of them, at least, kept payroll checks for several weeks without cashing them? Does that employee need a job? Does that employee care about her job? Does that employee care about your job?

DON'T BE FOOLED! The Union may make promises. But they cannot force the Company to do anything the Company is unable to do.

For example, the Company has the best pension plan of any trucking company for clerical employees. You are building up valuable pension rights for yourself and your family. If the Union comes in, will your pension rights be lost? Ask the people who are trying to force you into the Union, what will happen to your pension rights.

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Don't accept empty promises. Let them show you on paper the effect of the loss of your present pension rights if the Union wins the election.

If the people who are asking you to fall into the trap of voting for the Union, succeed, ask them if they can guarantee what Pinter has always been able to accomplish.

1. Steady jobs.

2. Superior wages and working conditions.

Has the Union been able to stop unemployment? In New York City the unemployment rate is almost 11%. In New Jersey it is more than 12%.

Ask the Union how many of its members are out of work now.

And you might also ask the people who are trying to force you into a union to compare the stability of your job with the loss of jobs in union plants.

Ask the Union and the people who are trying to fool you into joining the Union how many strikes there have been in the last two years and how many jobs have been permanently lost because of strikes.

You are entitled to vote any way you see fit. You have the right to vote for or against the Union.

No one will know how you vote.

The fact that you signed a card for the Union does not mean you must vote for the Union. The National Labor Relations Board will tell you that you have the right to change your mind.

I am sure each of you know that your best interests must be determined by what is best for you and your family. If you lose your job or there is a strike, the Union officials continue to draw their salaries while you are out of work.

And if you are out of work because of strike, you do not get unemployment insurance benefits. Ask the Union to tell you the truth about that!

The one great freedom you have, is the freedom to be free and to keep your job without paying union dues and assessments.

Sincerely,

J. A. Pinter

JOSEPH A. PINTER

JAP:ml

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APPENDIX C.

MAIN OFFICE:
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Pinter
Truckmen-Warehousemen

NEW YORK - LONG ISLAND - NEW JERSEY
DAILY - SERVICE - DIRECT

March 25, 1975

TO OUR EMPLOYEES

You will be voting tomorrow (Wednesday) either for or against a Union.

The fact that you signed a card does not mean that you must vote for the Union. You are free to vote as you think best for yourself and your family. Your vote is secret and and no one can pressure you into doing what is against your best interests and the interests of your job and your family.

The Union wrote you a letter but they forgot to tell you These facts:

The Union has made contracts with truckers all over the City of New York. Ask the Union how many truckers have gone out of business in the last years because of the Union contracts? Ask the truckers how many truck' drivers who had seniority and pension rights lost their seniority and pension rights because their companies were forced out of business? Ask the Union what benefit there is to the workers if only a handful of members of the Union win top seniority rights?

The Union speaks of better terms and conditions. Ask yourself this:

DID THE UNION SHOW YOU A SINGLE CONTRACT WITH ANY TRUCKING COMPANY WHICH PROVIDED BETTER WAGES, HOURS AND FRINGE BENEFITS THAN YOU HAVE?

WHY DIDN'"T THEY SHOW IT TO YOU?

The answer is simple: THEY HAVE NONE!

The Union Speaks about protection against layoffs. No Union can protect anyone against layoffs.

Ask your friends who are in the trucking industry how many drivers and platform workers have been laid off in the last year?

The Union says that Pinter Bros. will reach an agreement if the Union wins. That is an empty promise.

If the Union wins, the law requires that we bargain in good faith. It does not compel us to reach an agreement.

If, in good faith we do not reach an agreement, there will be a strike and jobs will be lost.

We have only one final word.

DON'T LET A FEW DISGRUNTLED EMPLOYEES SELL YOU DOWN THE RIVER.

You have an obligation first to yourself and to your family.

When you enter the voting booth, decide whether you want to gamble on some future promises against what has been solid performance by Pinter Bros. since you have been workding here.

Although you are free to vote any way you see fit, we suggest you vote "NO".

Very Truly Yours,

J. A. Pinter

Telegram western union Telegram western union

305

2240 LIDHST

HEB226 PD TDHE BAYSHORE NY 15 01-17 659P EST

VERA BARBER REPORT DLY
804 CATSKILL AVE LINDENHURST NY

EFFECTIVE 17 JAN 1975 1730 HOURS WE ARE TERMINATING YOUR EMPLOYMENT FOR VIOLATION OF COMPANY POLICIES BROUGHT

TO YOUR ATTENTION ON 15 JAN 1975

ROBERT J PINTER PINTER BROS

CARLLS PATH DEER PARK NY 11729

JAN 17 848P
CLR

Gen Counsel's Ex 3 ~~for Iden~~ in Ev.
[illegible] 7/8/75

2240 LIDHST

western union

DATE: 1-17 1975

M~~rs~~ Mrs. Rowan

A TELEGRAM FOR YOU

☑ Has been placed under your door.

☐ Has been returned to office indicated below where it may be had upon presentation of this notice, or it will be telephoned to you upon request.

OFFICE ADDRESS AND TELEPHONE NUMBER	
Lindenhurst ~~884~~ 8888	
TELEGRAM NUMBER	MESSENGER

WU 66 (R8-66)

306

Western Union Telegr

[illegible] FR TOMS [illegible]HOLE [illegible]

BEATRICE PAGE [illegible]

[illegible] RICHMOND AVE [illegible]VILLE [illegible]

EFFECTIVE 17 JAN [illegible] 1430 HOURS WE ARE

TERMINATING YOUR EMPLOYMENT FOR VIOLATION

OF COMPANY POLICY [illegible] ATTENTION ON JAN 13TH

[illegible]

[illegible] BROS

[illegible]

(900AM)

306

[illegible]

FORM NLRB-760 (5-73)

307 file A.C. 15

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PINTER BROS., INC.

Employer

and

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Petitioner

Case No. 29-RC-2888 | Date Filed 1-20-75

Date issued MARCH 26, 1975

15

Type of Election: *(Check one:)*

☐ Stipulation
☐ Board Direction
☐ Consent Agreement
☒ RD Direction

Incumbent Union *(Code)*

(If applicable check either or both:)

☐ 8(b) (7)
☐ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 35
2. Void ballots 0
3. Votes cast for PETITIONER 14
4. ~~xxxxxxxx~~
5. ~~xxxxxxxx~~
6. Votes cast against participating labor organization(s) 18
7. Valid votes counted (sum of 3, 4/5, and 6) 32
8. Challenged ballots 1
9. Valid votes counted plus challenged ballots (sum of 7 and 8) 33
10. Challenges are (not) sufficient to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (item 9) has (not) been cast for: Petitioner

For the Regional Director

Bruce R. Kettler

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For PINTER BROS., INC.

Joe A Pinter

For TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

For

For Louis Schneir

August 24, 1975

308

DC 20 [illegible]
CB
11/18/75

Mr Pinter,

In reference to my oral resignation on Friday August 22, 1975, I want you to know that it was made in haste. I was very upset at the time but after giving it much thought over the weekend I have decided to retract my resignation.

I will continue working for you in the same manner as I have done in the past.

Sincerely,
Dom Bonadonna

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)
(Additional charges required for these services)

☐ Show address where delivered
☐ Deliver ONLY to addressee

RECEIPT
Received the numbered article described below

REGISTERED NO.
SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)
CERTIFIED NO. 191677
SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
INSURED NO.
DATE DELIVERED 9/2/75
SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

No. 191677

FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO
Pinter Bros. Inc.
STREET AND NO.
Carll's Path & Lake Ave
P.O., STATE AND ZIP CODE
Deer Park, NY 11729

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered .... 15¢
With delivery to addressee only .... 65¢
2. Shows to whom, date and where delivered .. 35¢
With delivery to addressee only .... 85¢

DELIVER TO ADDRESSEE ONLY .... 50¢
SPECIAL DELIVERY (extra fee required) ....

PS Form 3800
Apr. 1971

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side)

POSTMARK OR DATE
DEER PARK N.Y.
AUG 30 1975

GPO : 1974 O - 551-4

Employee No. 134[illegible] 309

Date Employed 11-8-71

Social Security No. 124-42-5847

NAME: Dia[illegible] Lufker (Ridgewell)

Address: 1356 Gardiner Dr., Bay Shore

Phone: 666-0042 11706

G.C.-21

1975

Sick Leave Record **Employee Data Calendar** **Vacation Record**

JANUARY

S	M	T	W	T	F	S
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FEBRUARY

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☐ Paid Holidays ☐ Sick Leave ☐ Vacation ☐ ☐

E.D.F. 101 EMPLOYEE DATA FORMS—P.O. BOX 665—COLUMBIA, MISSOURI 65201

Employer's Ex 5 ~~[illegible]~~ in EU.
Rec 8/20/75

Spoke to 'five [illegible] following 3/24/75

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SUGGESTED POINTS FOR A DISCUSSION WITH THE EMPLOYEES

1. Outline the history of Pinter.

2. Point out that jobs have increased at Pinter.

3. Point out that there have been no layoffs at Pinter even though the economy has turned down.

4. Point out that unemployment among truck drivers and other workers in the trucking industry has risen to more than 12%.

5. Point out that there has been no loss of jobs at Pinter even though business has declined.

6. Point out that our wages are higher than the area wages for similar jobs.

7. Explain that the employees have welfare and pension rights, vacations and other benefits without having had a union.

8. Point out that every employee is free to discuss a grievance without having an outsider interfere.

9. Explain how the Union propaganda began to develop (make available the records of the two employees showing their excessive telephone calls).

10. State that the Company cannot afford wasted time and the Company has a right to a fair and full day's work just as the employees are entitled to fair and full compensation.

11. Tell them plainly that the Company does not want a union among the employees.

12. Explain that clerical workers are not physical production workers.

13. Tell them not to vote blindly based on empty Union promises.

14. Compare the Union promises to political promises.

/

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15. Suggest to them that they ask the Union to show their contracts covering clerical workers in your area.

16. Explain that the Company must have some discipline in its office because if the office is not productive, the Company cannot survive.

17. Explain your responsibility to see that the Company does survive and this means keeping costs under control; otherwise jobs will be permanently lost.

18. Point out that no union can guarantee a job. In this connection you can show that in every trucking company at least 15% of the drivers are out of work even though the drivers have had unions for more than 50 years. Tell them that you are making no promises to them and you are making no threats.

19. Explain that the Company has been always willing to listen to grievances and the Company will do its best to avoid any future grievances.

20. Bring out that during the Company's history, wage increases have been regularly granted and that the wage levels of employees have been steadily improved.

21. You can conclude by saying that the Union can make many promises and make many demands but if the Company cannot meet those demands, there can be a strike and jobs can be permanently lost.

I would not invite any questions and answers from the floor. You must carefully control this meeting; otherwise it will turn into a brawl.

Herbert Burstein

312

Employee No. 125 [illegible]

Date Employed 2-17-~~67~~ 71

Social Security No. 085-42-4829

NAME: Patri[illegible]a Ossenfort

Address: 567 Carll's Path, Deer Park 11729

Phone: MO 7-8976 in Ev.

Rd/ Ex 9 [illegible]
[illegible] 8/26/75

1975

Sick Leave Record **Employee Data Calendar** **Vacation Record**

JANUARY

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DECEMBER

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☐ Paid Holidays ☐ Sick Leave ☐ Vacation ☐ ☐

E.D.F. 101 EMPLOYEE DATA FORMS—P.O. BOX 665—COLUMBIA, MISSOURI 65201

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JD-261-76
Brooklyn, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PINTER BROS., INC.

and

Cases Nos. 29-CA-4281

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

29-CA-4554

DIANE M. LUFKER

29-CA-4570

DORIS BONADONNA

29-CA-4594

PINTER BROS., INC.

29-CA-4601

Employer

and

29-RC-2888

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Petitioner

Harold R. Weinrich, Esq., of
Brooklyn, NY, for the
General Counsel.
J. Warren Mangan, Esq., of
Long Island, NY, for the
Charging Parties.
Herbert Burstein, Esq. (Zelby,
Burstein, Liberstein & Hartman)
of New York, NY, for the
Respondent.

DECISION

S[illegible]ment of the Case

BERNARD RIES, Administrative Law Judge: On June 4, 1975, the Regional Director for Region 29 issued a complaint in Case No. 29-CA-4281, as amended on July 10 and 28. On June 20, 1975, the Regional Director issued a Report on Objections in Case No. 29-RC-2888, pertaining to an election held among Respondent's clerical employees on March 26, 1975, and ordered that certain issues raised by Case No. 29-RC-2888 be consolidated for hearing with Case No. 29-CA-4281. On October 29, 1975, when the hearings in the foregoing cases were nearing completion, the Acting Regional Director for Region 29 issued a complaint in Cases Nos. 29-CA-4554, 29-CA-4570, 29-CA-4594, and 29-CA-4601. By motion dated October 31, 1975, counsel for the General Counsel requested that the newly-issued complaint be consolidated for hearing with the pending case, a motion which I granted over Respondent's contention that the second complaint raised no issues in common with and related to the complaint then being heard.

These cases were heard on July 28-30, August 18-21, and November 18-19, 1975. The complaint in Case No. 29-CA-4281 alleges that, on January 15, 16, and 17, 1975, Respondent unlawfully kept under surveillance the meeting places and concerted activities of its clerical employees; that, on January 17 and 20, Respondent unlawfully interrogated its employees; that, on January 17, Respondent terminated employees Vera Barber and Beatrice Pagliarulo and, on January 20, laid off employees Jayne Healy and Deborah Gulbrandsen, because of their protected concerted activities; that, since January 20, Respondent has wrongfully refused to bargain collectively with Truck Drivers Local Union No. 807 as the exclusive bargaining representative of its office clerical employees; that on March 18 and 24, 1975, Respondent threatened its employees with loss of pension benefits, establishment of job classifications, and other reprisals for supporting Local 807; and that, on March 26, 1975, Respondent unlawfully refused to admit prospective voters to the polling place during the conduct of a Board election.

In Case No. 29-RC-2888, the tally of ballots in the election held on March 26, 1975, shows that 14 votes were cast for Local 807, 18 were cast against Local 807, and 1 ballot was challenged. The Union filed five objections to the election. The Regional Director overruled two of the objections, and referred the remaining three to me for resolution. The pending objections relate to the refusal to admit prospective voters to the polling place, letters sent to employees on February 19, March 18, and March 24, and statements made at meetings of the employees held on March 24 (which conduct is also alleged to be violative of Section 8(a)(1) in Case No. 29-CA-4281).

The complaint in Cases Nos. 29-CA-4554, 29-CA-4570, 29-CA-4594, and 29-CA-4601, alleges that on August 21 and 22, 1975, and other dates, Respondent's agents threatened employees with reprisals because of their support for Local 807 and because the employees filed charges and gave testimony in this proceeding; that Respondent, on August 21, subjected employee Diane Lufker to closer supervision than she had previously been given, and on various dates in September and October 1975 changed her working conditions, thereby causing her a loss of employment, because she filed charges and testified in this proceeding; and that on September 5, 1975, Respondent discharged employee Doris Bonadonna and refused to reinstate her because of her activities on behalf of Local 807.

On or about February 6, 1975, briefs were received from Respondent and the Charging Party. Upon the entire record, 1/ including my observation of the witnesses, and after due consideration of the briefs, I make the following:

Findings of Fact

I. The Business of Respondent

Respondent, a New York corporation, maintains its place of business at Carll's Path, in the Town of Deer Park, County of Suffolk, State of New York, where it engages in intrastate and interstate trucking. During the year preceding issuance of the first complaint, Respondent received gross revenues in excess of $5 million, including revenues in excess of $50,000 for services performed outside of the State of New York. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

The complaint alleges, the answer admits, and I find, that Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. The Alleged Violation of Section 8(a)(3) by the Discharge of Barber and Pagliarulo and the Layoff of Healy and Gulbrandsen

Respondent is a large trucking company, having some 170 employees and a fleet of 200 trucks, headquartered in a three-story building in Deer Park, Long Island. Its drivers, platform men, and warehousemen have been represented for more than 20 years by Local 807, the principal Charging Party here; its office employees (numbering 39 in January 1975) have not previously been represented by a union. We address here the question of whether clerical

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1/ The transcript of proceedings is hereby corrected as set out in Appendix A, attached hereto.

employees Vera Barber, Beatrice Pagliarulo, Jayne Healy, and Deborah Gulbrandsen were unlawfully released from employment for their efforts to secure representation by Local 807.

According to the credited testimony of Vera Barber, who commenced employment with Respondent in March 1968, around October or November 1974, Barber began discussing with several other office employees their common grievances and the possibility of organizing collectively. The discussions took place intermittently at lunch, during coffee breaks, at the homes of employees, and during working hours, and they continued into January, when two of the employees were discharged and two laid off. Barber's desk was located two desks away from that of Respondent's controller, Charles Brown.

Around December 27, 1974, Respondent notified employees that, effective January 6, 1975, their hours were to be changed. The employees discussed the matter with some intensity during working hours.

On January 10, Respondent's majority stockholder and chairman of the board of directors, Joseph Pinter, Sr., called a meeting of the office employees, at which, in the presence of his son Robert, who is Respondent's president, and other supervisory personnel, he said that it had come to his attention that the group "felt harassed by the change in hours." He then explained the business justification for the change. Inter alia, he further stated, as Barber and four other employees testified, that business was slowing down, that he had already asked the drivers if they would accept a 4-day week, and that, "as far as the office is concerned he doubted that business would get that bad but he would also hope that we would go on a 4-day week rather than his having to let the least senior employees go." 2/

During the lunch period on January 10, about 13 of the clericals lunched at a restaurant and decided to draw up a list of grievances over the weekend to present to Robert Pinter, and further determined that, if the grievances were not resolved, they would then contact the Union. 3/

Upon their return from lunch, the employees conversed in the lobby of Respondent's building. There, they encountered Respondent's general manager, Richard Jacoby. Jacoby told them that "the door is not locked" and they could enter.

On Tuesday, January 14, Beatrice Pagliarulo, who had been employed by Respondent since April 1969 and who had participated in the prior union discussions, spoke with Ted Spera, the Union's shop steward for Respondent's drivers, about union representation. On the morning of January 15, as

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2/ Robert Pinter conceded that his father stated at the meeting that Respondent had never previously laid off employees for economic reasons, and that "he mentioned that we looked at a four day week and we would, you know, check it out." He further stated that his father had made some reference to the drivers.

3/ No such list was submitted to management, however.

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arranged with Pagliarulo, Spera gave some union authorization cards to Vera Barber. She and Pagliarulo then spoke to some 17 other employees about meeting for lunch at a nearby restaurant. At lunch, Barber and Pagliarulo told the girls that, as Spera had told Pagliarulo, "all we had to do was sign [the cards] and the union would then be representing us and we were going to meet later on that night." Barber, Pagliarulo, and most of the other girls signed cards during lunch. That afternoon, Barber and Pagliarulo were called in by Robert Pinter and chastised for excessive use of company telephones for personal calls, as more fully described infra. That evening, Spera met with a number of the employees at a bowling alley and discussed the benefits the employees would receive from union representation.

The foregoing is based on the testimony of a number of witnesses; the testimony of Respondent's witness Patricia Ossenfort, an office employee, raised a question as to whether the cards were in fact signed on January 15. Ossenfort testified that it was on Janaury 16, the day after Robert Pinter had confronted Barber and Pagliarulo with the results of a telephone survey which showed that they had been using the company phones for personal calls, that the luncheon and the bowling alley meeting were held, and the union cards (or some of them) signed.

According to Ossenfort, she did not work on Thursday, January 16, 4/ and, around noon on that day, Barber and employee Charlotte Destefanis came to her home, asked her to go to lunch (which she declined), displayed and asked her to sign a "white card" for the Union, and invited her to attend a meeting at the bowling alley that evening. She did attend the evening meeting; she named six other employees as some of the ones who were present. According to Ossenfort, after Spera came in, green authorization cards were handed out to the employees, which they signed. Ossenfort testified that Barber said to all the girls, "Re-date these cards the fifteenth, not today's date, the sixteenth." Ossenfort said that Barber gave as the reason for doing so the fact that Pinter had spoken to her and Pagliarulo about the phone surveys on the previous day and that he had told them "he was going to go back, and, if [other phone surveys] were as bad as these, he was going to have to let them go." The predating was necessary, Barber allegedly told the group, because Barber "wanted the union to protect her job." 5/

4/ Respondent's records substantiated this assertion.

5/ The implication apparently being either that Barber thought that the signing of the union cards on the same day that she was confronted with the phone survey would in some manner afford her legal protection, or, more deviously, that Barber sought to construct a situation in which the Board would afford her relief, in the event of discharge, by the device of arranging the chronology of events so as to make it appear that Pinter's criticism of Barber and Pagliarulo occurred only after a meeting at which the two had secured cards for the Union.

Six of the General Counsel's witnesses testified, to the contrary, that they signed cards at lunch on January 15 (alleged discriminatees Barber, Pagliarulo, Healy, and Gulbrandsen, and employees Schulz and Destefanis). 6/ Although Ossenfort's testimony on cross-examination shows that Respondent was made aware prior to the hearing that Ossenfort was willing to testify as described above, Respondent's cross-examination of the General Counsel witnesses did not home in on the question of whether they had in fact signed their cards on January 15--the closest Respondent came to doing so was when it asked employee Gulbrandsen about a strike-over in her pretrial affidavit which might imply that she told the Board agent that the cards had not been signed on the 15th. 7/

After Ossenfort testified, however, Barber gave rebuttal testimony that there had been only one bowling alley meeting, that it took place on Wednesday, January 15, that she did not address the employees at the meeting, and that she did not make a plea to Ossenfort or anyone else at that meeting to back-date cards in order to save Barber's job. Barber did, however, volunteer that, after her termination on January 20, she had asked employee Stansell to sign a card in order to help Barber regain her job, as Stansell had testified. Local 807 steward Ted Spera also testified in rebuttal that the meeting at the bowling alley which he attended in January had been held on Wednesday, January 15; it appeared to me, however, that Spera's testimony on this point was more reconstruction than recollection.

6/ Employee Lufker merely testified that she had signed a card, without specifying the details.

7/ Early in the hearing, Respondent had asked the General Counsel to "represent" that the cards had actually been signed on January 15, but gave no reason for so requesting (Tr. 22). In a subsequent colloquy (Tr. 83-84), Respondent asked to see all of the cards in General Counsel's possession. I ruled that there was no need to produce cards upon which General Counsel was not relying to establish majority status (General Counsel had announced a theory of establishing the Union's majority status, as a predicate for a bargaining order, by relying upon 14 votes cast for the Union in the March 26, 1975, election plus six cards earlier signed by nonvoters). Respondent's counsel then asked, "Suppose the cards [were] signed on the 16th and dated the 15th? Don't you think that is relevant?" I replied, "Not if those cards were signed by people who later voted in the election. I am talking in the context of Mr. Weinrich's theory." At the time these cryptic references to erroneous dates occurred, my total unfamiliarity with the nature of the issues, as much later put into focus by Ossenfort's testimony, gave me no reason to believe that a 1-day variation in the date upon which the cards were signed might develop into an arguably material point.

Barber gave the appearance of being an honest witness, but so did Ossenfort. Ossenfort's story is, seemingly, the kind of testimony that an employee (at least one who is acting independently) would not be likely to fabricate; Ossenfort testified that her reason for coming forward was that "I hadn't said anything all along and then I just decided at one point that I was going to mention these pre-dated cards."

In other respects, however, there is reason to question Ossenfort's veracity. She testified that although at some point prior to the hearing, she sent word of the alleged predating to Joseph Pinter, Sr., through employee Claire Dorr, he never discussed with her the nature of her testimony. Furthermore, Ossenfort flatly stated that, on the day before she testified, she met for the first time with Respondent's counsel and had lunch with him and the two Pinters, but that, while counsel asked her at that time to draw up a written statement, he asked her, prior to hearing, no questions whatsoever or in any way discussed her statement or her potential testimony. I find it wildly improbable that counsel, having lunch with Respondent's only ostensibly disinterested employee witness who would testify to a matter which could, in part, impeach the testimony of six of General Counsel's witnesses, would not have taken the opportunity to discuss that testimony. [8]

Testimony given later in the hearing on new complaint allegations consolidated with the original ones also suggests a rather closer relationship with the Pinters than Ossenfort's testimony implied. Employee Claire Dorr, who testified for Respondent, mentioned that she had been at Ossenfort's house on the evening of the day Ossenfort testified, and that Joseph Pinter had called Ossenfort to tell her that Barber had taken the stand to rebut Ossenfort's testimony. I further note that other of Ossenfort's testimony on cross-examination is unimpressive--e.g., she testified that she had told Joseph Pinter "about the card signing as [I] described it here today," but could not remember when; then said she had "not really" discussed with him the subject matter of her testimony "until yesterday when he asked me to come to court"; and wound up saying that she had not "as of yet" discussed the matter or her testimony with Pinter.

Also a factor raising questions about the reliability of Ossenfort's testimony is a clear record indication of dissension between her and other prounion employees, most particularly manifested in a conflict between Ossenfort and Doris Bonadonna, a supporter of the Union, which resulted in Bonadonna refusing, after the March election, to drive Ossenfort to and from work, as she had been doing.

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[8] In this connection, I note also that Ossenfort mentioned that she did not work for a half-day on January 28. I do not believe that she had an independent recollection of this fact on August 20, the day on which she testified. If she had no such recollection, it would mean that she had reviewed Respondent's records prior to hearing or had been instructed to review her own--in either event, such testimony militates against her assertion that she had not discussed her prospective testimony with the Pinters or counsel prior to the day she testified.

As stated above, in addition to the alleged discriminatees, two other employees--Destefanis and Schulz--testified that they signed the cards at lunch on January 15. They had no more apparent benefit from perjuring themselves than did Ossenfort, and I found them to be very credible witnesses. I had the same reaction to the four alleged discriminatees, 9/ who willingly testified to other matters which obviously favored Respondent's case. All things considered, I am inclined to credit the testimony that the cards were passed out and signed at a luncheon on January 15.

Around the end of December or the first of January, Robert Pinter had ordered from the telephone company a survey of outgoing local calls made from the office; the circumstances surrounding this action will be discussed infra. On January 15, Robert Pinter received the phone survey, consisting of all local telephone numbers to which outgoing calls had been placed in the period November 12-December 9. Pinter immediately set to work to determine the identity of the persons who had made calls. By the afternoon of January 15, Pinter had established from the survey that the employees who had apparently made the most personal telephone calls were Vera Barber and Beatrice Pagliarulo. 10/

Around 5 p.m. on January 15, Robert Pinter called Vera Barber in, and, in the presence of supervisors Richard Jacoby and Charles Brown, showed her the phone survey, and a summary of the survey, and asked her if she had made the calls which he had marked on the survey as probably emanating from her. He told her that she knew that she was not supposed to make personal calls. Barber testified that she said she was sorry, and offered to pay for the calls. 11/ According to Barber, Pinter said that this would not be good enough. He told her that he had also requested the telephone company to make a similar survey for September and October, and that after he received the survey, he would decide what to do about her. 12/ He also mentioned that he had told Charles Brown, her supervisor,

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9/ Gulbrandsen's testimony does not read well. In person, however, she conveyed a strong sense of honesty.

10/ The relevant record, a handwritten summary drawn up by Pinter on January 15 (Respondent's Exhibit 7), shows that as of that time, Pinter knew that Pagliarulo had made 11 calls totaling 63 minutes and 52 seconds and Barber had made 9 calls for a total of 37 minutes and 14 seconds. Dolores Fletcher, another employee, had made, according to Pinter's summary, 6 calls totaling 20 minutes and 10 seconds. No other employee's calls were shown on Pinter's summary.

11/ Robert Pinter confirmed Barber's testimony in this regard.

12/ Pinter testified that he had told Barber "I am going to get September and October and if they're as bad you're going to get your walking papers," and that when he then asked her how those months would compare, she "just shrugged her shoulders."

that she was no longer to touch the telephone. Barber testified, without contradiction, that, in her 7 years of employment with Respondent, Brown had twice told her to "take it easy on personal calls," the most recent occasion being June 1974.

Pagliarulo was then called in by Robert Pinter, and a similar conversation ensued. Pagliarulo apologized for using the phone, and also offered to pay for the calls; Pinter recalled that she had apologized, but did not remember that Pagliarulo had offered to pay. Pagliarulo also said to Pinter that she "didn't see any point in him going back in the survey, that he should warn you and look ahead to see if you stopped." 13/ When she left Pinter's office, Pagliarulo was told by her supervisor, Catherine Turk, that she was being removed from her job as an "on hand" clerk (which involved using a telephone) and reassigned to a "floater" position, because she could not be trusted with a telephone. She went back to Pinter, protested the job change, and tried to explain the length of some of the calls shown on the survey. Pinter then brought up the matter of the earlier change in hours, and Pagliarulo explained why the girls were upset about it. The conversation closed with Pinter refusing to rescind Pagliarulo's transfer. Pagliarulo had never previously been warned about using the telephone for personal purposes.

Dolores Fletcher, the other employee shown on Pinter's summary, was not personally confronted that day.

On January 16, office manager Richard Jacoby had a meeting with all office personnel. He told them that Respondent was in the process of obtaining the telephone surveys, that the personal calls were getting out of hand, that two girls had been warned about the matter on the preceding day, and that the company was going to start checking on personal calls.

According to Barber, a group of the employees again lunched at a restaurant on January 16. 14/ Barber testified that Jacoby and Robert Pinter were observing them from a window of the office building as they left from the parking lot.

On Friday, January 17, upon leaving work at about 5:30-6 p.m., Vera Barber, Beatrice Pagliarulo, Charlotte Destefanis, and Joanne Berderane waited in the parking lot for night-shift employee Sinclair, with the purpose of ascertaining the amount of union support among the night-shift employees. Barber encountered night employee Alberta Nash and engaged her in innocuous conversation. Joseph Pinter, Sr., exited the building, got into his car, drove up to Barber and Nash, asked them "How are my lovely night girls," and told them to have a nice weekend. He then, however, started to pull away, looked in his rear view mirror, made a U-turn, parked his car, and reentered the building. 15/ The day shift employees encountered Sinclair entering the lot, and shortly thereafter drove off.

13/ Pinter testified that he asked Pagliarulo whether September and October would reflect a worse experience, to which she replied, "Probably worse." He then told her "I am going to have to take everything into consideration and think it over."

14/ Pagliarulo only recalled eating lunch with "a few" girls that day.

15/ During this period, the other three day employees, including Pagliarulo, were sitting in Barber's car, about 20 feet to the right of Pinter's car.

Sinclair, a night shift employee, testified that one night in January, "on a Friday maybe," 16/ she saw Barber, Pagliarulo, and some other employees in the parking lot as she was going to work. Inside the building, she saw Joseph Pinter. As to her encounter with him, she testified: " . . . He had been looking out and just asked me if anyone had approached me and I looked and said not (sic) just the girls said hello to me." 17/

16/ On cross-examination, Sinclair stated that she "imagine[d]" that the following incident occurred on the night Barber and Pagliarulo were discharged, although she had earlier testified to uncertainty on the point.

17/ Sinclair was a most reluctant witness for the General Counsel. An affidavit she gave to a Board agent stated that Pinter had asked her "if they (Vera and Bea) had approached me about anything." At the hearing, however, she denied that Pinter had mentioned the two names, and also denied telling the Board agent that he had done so. She further asserted that the Board agent had told her that the statement would be held "in confidence" and that "no one was to see it," and that the agent kept "pressuring" her despite her having told him that she "didn't want to get involved." Subsequently, however, when asked by Respondent's counsel to reaffirm her testimony that she had been "pressured" by the Board agent, she replied, "No, not-well, he asked questions like you are asking and I answered." She further said that she did not read the affidavit "that close" before she signed it, and that she signed only because "I thought it was my business to sign it."

While I received the affidavit in evidence, I conclude that, contrary to General Counsel's assertion at the hearing, I cannot consider it as independent probative evidence that Pinter specifically mentioned Barber and Pagliarulo to witness Sinclair. For one thing, people do not speak parenthetically, and Pinter obviously did not ask her if "they (Vera and Bea)" had approached her. Furthermore, an affidavit used in the manner described against a hostile witness (I have no doubt, as I ruled at the hearing, that Sinclair was hostile in fact to the General Counsel; at any rate, Rule 607 of the Federal Rules of Evidence provides that "The credibility of a witness may be attacked by any party, including the party calling him") is hearsay and ordinarily may only serve to impeach the testimony of the witness. Rule 801(d)(1)(A) provides that a prior inconsistent statement by a witness is to be considered hearsay unless the statement "was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition." The affidavit thus constitutes hearsay, and I may only consider it for purposes of impeachment of Sinclair. Because the affidavit was not intended to impeach, but rather (from the General Counsel's point of view) to improve, Sinclair's testimonial account of Pinter's statement, I shall therefore disregard the affidavit altogether. I find the testimony of Sinclair as given at the hearing to be a concession that, at about 6 p.m. on January 17, Joseph Pinter was looking out of the office window and asked her "if any one had approached" her.

That evening, at about 6:30 p.m., Robert Pinter sent telegrams to Barber and Pagliarulo at their homes, notifying them that they had been terminated. 18/ Barber received a notice that Western Union had attempted to deliver the telegram, but did not actually see a copy for several days. She spoke with Pagliarulo on Saturday, January 18, however, and learned that Pagliarulo had also received a telegram and, presumably, learned as well of its contents. The two contacted and met with Whitey Schneir, a Union business agent, over the weekend. They also called most of their fellow employees, notified them of their discharges, and arranged to meet at a diner early Monday morning. About 18 employees attended the meeting, at which Schneir informed them he would meet with Pinter that morning. The employees then went to work.

When Barber reported to the office, Joseph Pinter and Jacoby approached her, and Pinter asked if she had received the telegram. When she said she had not, he told her that she had gotten "the pink slip." She asked for the reason, and he said "Business is slow." She asked "Is that all?"; Pinter replied, "That is all." 19/ Just after Barber's conversation with Pinter, she began speaking with Schneir, who had just made a bargaining demand to Pinter. Also present were Union steward Spera, Jayne Healy and Deborah Gulbrandsen (the latter two were laid off that morning, as discussed infra). Pinter came up and said to Schneir, "These girls have been terminated and if you don't mind, I don't want you holding any meetings on my private property." 20/ Schneir acquiesced.

Pagliarulo also spoke to Joseph Pinter when she arrived. She asked him what the telegram was all about, and he said that "business is slow, we no longer have any use for you." When Pagliarulo then asked why the telegram stated that she had been fired for "violation of company policy," Pinter said that he did not know, and that she should ask his son. Joseph Pinter denied that he had told Pagliarulo that she had been let go because "business is slow," but admitted that he told Pagliarulo, "Look, I don't know what's in the telegram. If you want to know anything about it, ask my son Bob." Asked at the hearing why he had referred Pagliarulo to Robert, Joseph Pinter stated: "Since Bob made the decision, I wanted--I didn't want any conflicting stories."

Pagliarulo then spoke to Robert Pinter. He told her she had been discharged because of her personal phone calls. She stated that she thought he was waiting for the other surveys, and "he said he didn't have to wait for anything." Pagliarulo then asked why Joseph Pinter had just told her she was discharged because business was slow, and Robert Pinter said "regardless of the reason, you are fired, so get off the premises."

18/ The telegrams read,""Effective 17 Jan 1975 1730 hours we are terminating your employment for violation of company policies brought to your attention on 15 Jan 1975."

19/ Employee Charlotte Destefanis was present. She testified that, after mentioning "the old pink slip," Pinter, Sr., said "We don't need you any more." In his testimony, Pinter, Sr., at first could not recall whether Barber asked why she was terminated. I doubt his subsequent testimony that he may have told her "You violated company policy, or something like that, something to that effect."

20/ Pinter was not asked about this testimony by Barber.

The record is clear that no employee had ever been discharged in the past for excessive use of the telephone; 21/ that the customary procedure for discharging an employee was to notify him of the discharge shortly before quitting time on Friday evening; and that Joseph Pinter, Sr., could recall no occasion in the 45 year history of the company in which an employee had received notification of discharge by telegram.

Among the participants in the discussions about unionization was Deborah Gulbrandsen. Gulbrandsen was hired as a clerk-typist in August 1974, and performed assorted duties. She signed a card on January 15 and attended the meeting at the bowling alley that evening. On Monday, January 20, after leaving the meeting at the diner between the employees and Schneir, she reported for work about 8:30 and found that her timecard was missing. Joseph Pinter and Jacoby were standing near the timecard rack. Pinter called her over and said that "work was slow and that I wouldn't be needed any more," that she was "being laid off." 22/ She went into the lobby, saw Schneir and Spera, and was present when Joseph Pinter told the group to leave. An employee named Helen McDermott had been hired about a month after Gulbrandsen's hire in August 1974, at the same salary. McDermott's work function was filing bills, one of the jobs that Gulbrandsen had also performed. An employee hired through Tempo, a temporary employment agency, whose work involved filing and pulling bills, which Gulbrandsen had done, was still employed when Gulbrandsen was laid off.

Jayne Healy was hired by Respondent on October 16, 1972, as a file clerk. Her desk was located about 6 feet from that of Robert Pinter. She signed a card on January 15 and participated in the union discussions with the other employees, sometimes at her desk; she could not recall whether Pinter was present at his desk when such discussions were held. Healy attended the early morning meeting on January 20 and, when she arrived at work, Pinter, Sr., told her that she had been laid off because "business was slow." As of January 20, she was senior in employment to five other employees who were not laid off: Sue Burrier, who pulled bills and typed statements in the billing department; Rita Genato, a "floater"; Joanne Berderane, who worked in the claims department; Rosalie Palasolo, an interline department employee; and file clerk Helen McDermott. 23/

21/ Employee Schulz conceded, however, that Robert Pinter and Jacoby had occasionally told the employees not to make personal calls "of long duration."

22/ According to Pinter, Gulbrandsen asked, "Just like that?" and he replied, "Just like that." He testified that he simply told the two that their services were no longer required, and did not mention economic conditions. He also testified that an unsuccessful effort to reach Gulbrandsen (and Healy) at home had been made earlier that morning, in order to obviate their coming to work.

23/ While Robert Pinter testified that, as of January 20, Respondent had "one or two girls" with less seniority than Healy and Gulbrandsen, Respondent made no effort to contradict Healy's specific testimony by use of its personnel records, and I accept Healy's testimony.

Healy testified that on January 17, she had had sufficient work to keep her occupied. While employed, Healy had been told by supervisor Turk that she was "very accurate and very fast." 24/

The Union filed a petition for election on January 20, 1975. The election was held on March 26. Management representatives of Respondent conducted two preelection meetings, one for the day shift clericals and one for the night shift employees, on March 24.

According to employee Destefanis, Joseph Pinter, Sr., referring to notes, told the employees that the company offered good working conditions and pay; that many companies in the industry were going out of business; that a union could not guarantee jobs; that nobody likes anybody coming in and telling them how to run their business; that the unions only tell employees about the bad things; that he himself had wanted his drivers in the Union; and that the company was always prepared to listen to grievances. Pinter also referred to the two girls who had been fired, saying that he had a survey showing the calls made by them and that anyone was welcome to see it. He stated that he had been talking to a friend of his about these girls "causing all this trouble, and he couldn't understand why these girls who were making $190 and $195 a week could be so unhappy." 25/

Pinter told the employees that, if the Union won, he had to negotiate but did not have to reach agreement. An employee asked what would happen if an agreement was not reached, and Pinter said, "there could be layoffs and men out of work." During the day shift meeting, to the question by employee Claire Dorr as to whether the night girls could bump the day girls, Pinter answered that it could be so. 26/ According to Destefanis, a question followed as to whether day girls might not have to go on the night shift, and Pinter agreed. At that point, Destefanis testified, Robert Pinter stated that if the Union was elected, the employees

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24/ Turk did not testify.

25/ At the time of their termination, Pagliarulo was earning $190 and Barber $195. Employee Schulz also testified that, at a meeting (although she was unsure of its date), Pinter "mentioned that he couldn't understand why Bea and Vera were unhappy with--at their jobs with the salaries that they were making," and referred to them as "the instigators of a union." Destefanis, however, denied that Pinter specified by name the girls who had been "causing trouble."

Pinter used notes prepared by counsel; the notes are in evidence. One of the suggested points reads "Explain how the Union propaganda began to develop (make available the records of the two employees showing their excessive telephone calls)." It should be noted that, as of March 24, Barber and Pagliarulo had not yet filed charges, as discussed *infra*.

26/ Schulz corroborated the testimony of Destefanis on this point. Pinter, asked whether a question was raised about full-time employees bumping part-time employees, said "I heard something about that, but I didn't know how to answer it, so I said I didn't know."

would be put into job classifications, and that if new jobs opened up, present employees could not qualify for them because they would be locked into their classifications. 27/ Robert Pinter vaguely remembered a question about "whether they could bump someone else if they knew the job better or something like that, " and he responded that "as we have now, there will be job classifications."

Employee Sinclair testified, rather unwillingly, that at the meeting of the night clerical employees, Robert Pinter displayed a union contract and said that it contained a clause giving full-time employees seniority over part-timers, regardless of payroll seniority. A majority of the 13 night employees work only part-time. Sinclair also grudgingly and uncertainly testified that, during this meeting, the Pinters may have said that "they might have to cut down on the day operation."

Joseph Pinter testified that, at these meetings, he gave a speech which expanded on the notes given him by his counsel. He extolled the benefits being afforded the clericals. Among other things, he told them that "the company must have some discipline in its office because, if the office is not productive, the company cannot survive; and if the company does not survive and keep costs under control, jobs could be lost permanently." He also said that if the Union made demands the company could not meet, "there could be a strike; and, in a strike, you're bound to lose business; and, in that respect, jobs can be lost permanently." He also "may have referred to some [unionized companies] and with reference to the number of drivers that they had to lay off."

Employee Diane Lufker testified that at some time after Barber, Pagliarulo, Gulbrandsen, and Healy were terminated and prior to May 1975 (when she gave a statement to the Board), she was passing through Respondent's lunchroom near a table occupied by general manager Jacoby and controller Charles Brown, and overheard Jacoby say to Brown: "I told the old man not to fire those two girls, but he said no, because he doesn't want the union in." Jacoby testified that he never requested either of the Pinters not to terminate any of the four employees involved here, and denied making any such statement to Charles Brown. Brown did not testify on this point. Charlotte Destefanis testified that on one occasion of uncertain date, but at a time before she signed her union card, supervisor Turk "asked me if I had any idea, if I had heard any girls talking about a union, and I did not want to say anything to Catherine, and I said no." Turk, although still in Respondent's employ, did not testify at the hearing.

Robert Pinter and Joseph Pinter, Sr., explained at the hearing the reasons for discharging Barber and Pagliarulo, and laying off Gulbrandsen and Healy.

27/ The company practice generally had been to train present employees for new positions, except when the existing complement could not handle the work load.

Robert Pinter testified that the downturn in the economy, and in his business, had led him, in the late summer of 1974, to take a new look at Respondent's operations. As a result of a consultant's recommendations (and the trend of the economy), the platform force was reduced from 42 men to 31 as of August 1975; the reduction was not achieved by termination, however, but by attrition. Management personnel engaged in "constant" meetings to analyze every facet of the business and attempted to carve off any demonstrable fat.

For several years, Respondent had been investigating the possibility of installing a computer system and, about mid-1974, leased one. It was put into operation on January 1, 1975. The result of the installation of the computer was to reduce the amount of clerical work required to be done manually.

Robert Pinter testified that his office had received "constant complaints" from outside callers that Respondent's telephone lines were always busy. 28/ Accordingly, around the end of December 1974 or the first part of January 1975, he requested the telephone company to conduct a survey of Respondent's local phone lines; the month chosen, at random, was November 1974. The survey was received by Pinter on January 15; it shows, inter alia, the date, duration, and telephone number called of all local calls placed between November 12 and December 9.

Pinter instructed his secretary, Joan Barry, to underline on the survey "all calls that are over 5 minutes," and then to make up a summary of the phone numbers so underlined. The phone company records, with Barry's underlining, and her summary, are in evidence. With all due respect, I must note that Barry did a terrible job, so terrible that I am suspicious of the whole story. The exhibits show that she isolated 36 calls of over 5 minutes duration; my own review of the survey shows at least 50 other calls exceeding 5 minutes, ranging up to 23 minutes in length, of which Barry took no notice.

Pinter and Barry then checked the home phone number of the employees from personnel records and identified some of the calls shown on her summary. Other numbers, such as those of business acquaintances, were familiar to them. When unable to identify the numbers through their own knowledge or resources, they placed calls to the numbers. After going through this process (and being unable to identify a number of the over-5-minute calls), Pinter perceived connections between the numbers called and three nonsupervisory employees: Barber, Pagliarulo, and Delores Fletcher, secretary to the warehouse manager. When this was done, Pinter then went back to the telephone company print-outs and made a list of all calls made to the identified numbers, even though they were less than 5 minutes in length. His deductions showed that in the 1-month period, six calls were made to Fletcher's house, nine calls were made to Barber's house, and 11 calls were made to the liquor store at which Pagliarulo's husband worked. He duly recorded these calls on two pieces of paper, now in evidence as Respondent's Exhibit 7. 29/

28/ Respondent had seven lines for local calls, and seven more for calls from outside the Nassau-Suffolk area.

29/ Pinter misstated the facts in saying that the exhibit shows nine calls made to Barber's home number (884-4247), which is what the paper (Continued)

On the evening of January 15, Pinter summoned Barber and Pagliarulo to his office. They admitted they had made the calls. Pinter testified that he told Barber that he was also going to get surveys for September and October "and if they're as bad you're going to get your walking papers." He says that he asked Barber how the September and October surveys would compare to the one relating to November, and she "just shrugged her shoulders." In a separate meeting with Pagliarulo, he put the same question to her. She "slyly said probably worse," and he told her "I'm going to have to take everything into consideration and think it over." 30/ He also, as previously discussed, told supervisor Turk to change Pagliarulo's job so that she would not be tempted by a telephone.

Pinter at first testified that he was "quite angry," but "before I took further action or final action I wanted to consult with my father." He did so, and, so Robert Pinter testified, Pinter, Sr., said "[W]ell, let's wait until the end of the week anyway before we do anything." He further testified that, in the interim, he observed Pagliarulo and saw that she was unhappy about her job change and was doing very little work. He also had Joan Barry continue to check out the still-unidentified numbers on the survey, and made some more identifications, including some lengthy calls to Pagliarulo's cousin, Pat Rogers. In testimony which was struck as unresponsive to the question asked, but which summarizes the thrust of Robert Pinter's initial testimony, Pinter stated, "As we continually went over and batted this thing back and forth, of course, we would take time when we were looking to cut back personnel and that we felt we didn't need these amount of people we had, so my judgment was that as long as these people were abusing phone privilege this would be good reason to terminate them."

The final decision was made, Pinter testified, at a meeting with his father (and perhaps Jacoby) "on what we were going to do" at about 5:30-6 p.m. on Friday, January 17. At that time, Robert Pinter pointed out that "we had to cut back anyway" but the "main reason" for firing Barber and Pagliarulo was the "excessive abuse of the phone calls which I thought justified the actions." Pinter testified that, in the past, general manager Jacoby had handled such personnel matters, but Jacoby "was in the process of getting ready to retire and relinquishing some of these responsibilities, so I sent the telegrams."

29/ indicates. In fact, a check of the basic record shows that one of the nine calls, running 7 minutes and 25 seconds, was made to the number 333-4747. Similarly, he errs in saying that the 11 calls shown on the exhibit under the number 842-1122 (where Pagliarulo's husband worked) reflect calls made to that number. In fact, the 4th call listed was made to Pagliarulo's cousin at 582-6739. Pinter's testimony as to when he discovered the cousin connection shifted quite a bit; at one point, he said he did not know that number belonged to Pagliarulo's cousin on January 15, the day he wrote up the exhibit, but it appears in the middle of the list (and, at the same time, the list does not contain other calls made to that number shown on Resp. Exh. 1).

30/ Pagliarulo did not deny making such a statement; she testified that she "can't recall" having said this, but refused to say she was "sure" she had not.

On cross-examination, however, Robert Pinter gave a different version of when the final decision to terminate was reached. There, he stated that he reached the conclusion on January 15 that he "wanted to let them go right away," and that on either that day or the morning of the following one, his father, after reviewing the survey material, told him to keep the girls on and "let them go at the end of the week." 31/ He explained the use of the telegrams as being that "Mr. Jacoby had handled most of this and before I realized that [Barber and Pagliarulo] had left, so--I was busy doing something else." Since the record shows that Jacoby did not go into semi-retirement until the following June, and since Jacoby had, as Robert Pinter conceded, "definitely" been consulted about the decision to terminate Barber and Pagliarulo, 32/ there is no apparent explanation of why Jacoby did not routinely handle the terminations, if, in fact, the decision was made on January 15 or 16. 33/

Joseph Pinter, Sr., agreed with his son's first version and contradicted the second one. The senior Pinter testified that Robert showed him the telephone survey on January 15 and said "we should fire the girls right then and there." Pinter, Sr., told Robert, however, "Well, since we only have two more days to the end of the week, why let's give it a little thought and we can make a decision then." He further testified that after meeting with his son at about 5:30 p.m. on January 17, and deciding to send telegrams to the two girls, he left the office, got into his car, started to drive off, and then returned. He had at least two reasons for returning--one he could not recall, but the other was that he saw Barber outside and he wanted to tell his son that "they" were still out there if he wanted to call "them" in. Robert, however, decided not to do so, but rather to go ahead with the plan of sending telegrams. Although Pinter, Sr., was the one who subsequently told Gulbrandsen and Healy at the timeclock on Monday morning that they were being laid off, he chose not to tell Barber of her discharge, assertedly already decided upon, because "I don't talk to people in the parking lot on matters of that kind" and, alternatively, because "I wanted to talk to my son first. He was the one who was handling the situation from the beginning."

As to the layoff of Gulbrandsen and Healy, inconsistencies also appeared in the testimony of Respondent's witnesses. Robert Pinter testified that their layoff was the product of a "continuing" series of meetings which Respondent's officials had been holding "since October, November, December." He said at first that he could not recall whether the names of Gulbrandsen

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31/ Joseph Pinter testified that it was on January 15 that his son showed him the material, and that he did not recall looking at it thereafter.

32/ Pinter testified that he was "pretty sure" that Jacoby participated in the discussion between the two Pinters on January 15 or 16 in which the decision allegedly was reached to terminate Barber and Pagliarulo.

33/ Robert Pinter also had a third version: " . . . we spoke about it before, we had made that decision, but we said we would definitely go over final on Friday, and it was definitely affirmed." Charging Party's brief refers to the Friday meeting as the "final-final" meeting.

and Healy came up at the late afternoon meeting of January 17, 34/ but that he gave the matter of dispensable employees some thought over the weekend:

> So over the weekend I was thinking of--[Pinter Sr.] is not too familiar with the general day-to-day running so I was trying to think of what people were the least productive and we figured that these people were the least productive which they were because one, the job was taken away and put in the dispatchers which proved to be a very good move.

Robert Pinter further testified that on Monday morning, January 20, he got together with his father and Jacoby, at which time he and Jacoby "went over the different jobs the people had" and decided that the jobs of Healy and Gulbrandsen were the most unessential; at that meeting, he also, and contrarily, testified, no other possible candidates for layoff were mentioned. Despite this self-proclaimed thorough involvement in the decision-making process, however, he conceded that he told a Board agent, and at the hearing affirmed the truth of the statement, that Jacoby would be the one who would really know the specific reasons why the two girls were laid off. 35/

Although Robert Pinter gave the clear impression that his deliberation during the weekend period about the matter was confined to his own thought processes, 36/ Joseph Pinter, Sr., testified that he and Robert, who lives with his father, discussed the matter at home over the weekend. He stated that Robert suggested that they lay off five or six girls; that he disagreed; that he asked Robert which employees he thought to be the least productive; and that Robert named Gulbrandsen and Healy. He further stated that he and Robert, over the weekend, "discussed and reached the decision" to lay off the two employees. Contrary to Robert's detailed testimony, described above, that he, his father, and Jacoby had a discussion as to layoff possibilities on Monday morning, Pinter, Sr., testified that he arrived at the office about 7:15 or 7:30, and that when Jacoby came in at 7:30, "I immediately" told him to call the two girls at home to notify them that they need not come in. At a subsequent point in his testimony, Pinter, Sr., reiterated that the decision to lay off Healy and Gulbrandsen was reached over the weekend.

34/ Subsequently, however, Pinter testified that he "think[s] it was brought out and we said well, we can always get together Monday and everybody think about it over the weekend and basically that's what we did."

35/ Jacoby did not testify on this point.

36/ In answer to the question "What day was the particular time you determined you would lay off Deborah and Jayne?," he answered, "Well, my father and I had a meeting Friday night and also Monday morning."

Robert Pinter and his father both conceded that, since the Respondent's formation in 1930, no employee had ever been laid off for economic reasons. Robert Pinter further admitted that "at least one" of the two laid-off employees (he did not identify which one) could have performed the work of employees who had less seniority but were not laid off. The parties stipulated that the employee complement remained constant at 35 employees from January 20 to March 26, the date of the election; thereafter, there were layoffs, although the record is unclear as to the number. Robert Pinter did testify, however, that, to the best of his knowledge, the layoff of employees after Healy and Gulbrandsen was "in accordance with seniority."

Analysis and Concluding Findings as to Barber and Pagliarulo

The evidence clearly supports General Counsel's contention that Barber and Pagliarulo were discharged for their activities in support of the Union. This conclusion, I might add, is solidly grounded on evidence and inferences which make irrelevant the conflict in testimony, and the possible radiating effect therefrom, between Respondent's witness Ossenfort and six of General Counsel's witnesses as to the date on which the cards were signed.

The issue of Respondent's knowledge of the union activity was hotly contested at the hearing. The Pinters claimed that they knew absolutely nothing about the onset of union activity until Teamsters representative Schneir arrived at the company premises on the morning of January 20. There are, however, circumstantial reasons for imputing such knowledge prior to the terminations.

Robert Pinter agreed that it was company policy to maintain "close contact" with the employees; at one point, Pinter demonstrated familiarity with the habits of the 39 employees by mentioning that Pagliarulo "very seldom ate" in the company lunchroom and that four or five of the girls "usually go around the corner some place." This suggests that the departure of large groups of the girls for luncheon meetings would attract attention. Respondent's officials were sufficiently aware of the widespread dissatisfaction among the employees about the change in hours as to believe that a meeting on January 10 was in order to explain the change. The record shows considerable discussion around the office, among girls who worked in open spaces along with supervisors, concerning their grievances and the possibility of unionization. It is clear that Pinter, Sr.'s secretary had a custom of reporting employee activities to him; asked if this was not so, he replied, "Yes, and it should be that way too." The record contains preelection letters to employees in February and March which refer to Barber and Pagliarulo as the instigators of the Union, even before they had filed charges. Dorr conceded that, on the evening of the election, Joseph Pinter told her that he was "hurt" that employee Bonadonna had "turned on him." In this setting, with a compact group of employees working in large unpartitioned offices in close proximity to their supervisors, it is not difficult to infer company knowledge of union activity. N.L.R.B. v. Link-Belt Co., 311 U.S. 584, 602; N.L.R.B. v. Stark, 525 F. 2d 422, 431, n. 8 (C.A. 2); N.L.R.B. v. Ampex Corporation, 442 F. 2d 82, 86 (C.A. 7); N.L.R.B. v. Lawson Printers, Inc., 408 F. 2d 1004, 1005 (C.A. 6); N.L.R.B. v. Pembeck Oil Corp., 404 F. 2d 105, 110 (C.A. 2); N.L.R.B. v. Dove Coal Co., 369 F. 2d 849, 851 (C.A. 4); Angwell Curtain Co. v. N.L.R.B., 192 F. 2d

899, 903 (C.A. 7). There is, furthermore, the undenied and credited testimony of Destefanis that at some time before she signed a card, supervisor Turk asked if she "had heard any girls talking about a union." 37/

In addition, there is other evidence of Respondent's knowledge of the union activity, either explicit in, or inferable from, the evidence of Respondent's motivation, as discussed below.

The most direct evidence of that motivation is the testimony of Diane Lufker that she overheard office manager Jacoby tell controller Brown, "I told the old man not to fire those two girls, but he said no, because he doesn't want the union in." This is a rather remarkable statement to overhear. However, I was observing Lufker closely as she gave this testimony. She uttered the words with a sense of conviction, and strongly conveyed the impression that she was repeating exactly what she had heard. No evidence appears on the record to indicate that Lufker had any personal interest to serve by fabricating this occurrence, and she undoubtedly was aware that such testimony would, to say the least, bring her into Respondent's disfavor. If the testimony had been created out of whole-cloth, one might think that the words "not to fire those two girls" could as well have been expanded to something like "I told the old man not to get rid of those four girls," so as to encompass Healy and Gulbrandsen; Lufker's testimony was, as indicated, more limited.

Jacoby's denial that he had engaged in such a conversation carried no similar ring of conviction. After careful consideration of all her testimony, I have concluded that Lufker should be credited. 38/

Other evidence and inferences amply support Lufker's direct evidence of Respondent's motivation in the discharge of Barber and Pagliarulo. I should point out that while the evidence is slender that Robert Pinter ordered the telephone survey for the purpose of laying a foundation for discharging anyone, his inability to name more than two of the people who had "constantly" complained about receiving busy signals when calling Respondent (his mother and "Sal" from Carolina Trucking) raises a serious question as to why he would bother undertaking the telephone survey. I note also that the notice of a change of hours which provoked unrest among the employees, leading to the January 10 meeting, was given on December 27; Robert Pinter testified that he ordered the survey around the end of December or the first part of January.

37/ I would not, however, place any reliance on the equivocal testimony regarding Robert Pinter on one occasion allegedly crouching behind a car in the parking lot, or the testimony concerning supervisors watching the employees in the parking lot from the office, or the testimony of Ted Spera that he spoke to Pinter, Sr., about the unionization of the office employees on January 18.

38/ I note also that Lufker is not involved in the testimonial conflict between Ossenfort and the other witnesses.

By the time Pinter received the survey and talked to Barber and Pagliarulo, the employees had held their luncheon meeting of January 10, at which they had discussed the possibility of seeking representation, and their January 15 meeting, at which cards were signed. When Pinter confronted Barber and Pagliarulo on January 15 with the survey results, I think it fair to infer that he was tacitly warning them that their jobs were jeopardy if they did not stop making waves. That Pinter did not intend, on January 15, to discharge the two is evidenced by his own admission that he told them he would wait until receipt of the September and October surveys before taking any action. I find it peculiar, to say the least, that an employer would, in normal circumstances, even think about discharging employees with tenure of nearly 7 years (Barber) and nearly 6 years (Pagliarulo) for the "only reason" of having made personal telephone calls amounting, in 1 month's time, to a total of 37 minutes and 63 minutes, respectively. 39/ If otherwise satisfactory veteran and trained employees had so erred in the past, it is likely that, in usual circumstances, they would have simply been warned not to repeat their transgressions. 40/ The threat here that Respondent might take some action in the future based upon the September and October surveys was, I believe, uttered only for the purpose of bringing to a halt the perceived ongoing collective activity by erecting a sword of Damocles over Barber and Pagliarulo. 41/

The two were not deterred, however. On the evening of January 17, they waited in the parking lot for the purpose of enlisting the night shift employees in the union. That, I believe, was what caused the sword to drop. That Pinter, Sr., saw Barber and Pagliarulo out there is clear. 42/ The testimony of General Counsel's reluctant witness, Sinclair, that, probably on January 17, as she was entering the building about 6 p.m., she saw Pinter, Sr., looking out the window and was asked by him "if anyone had approached me" 43/ is strongly indicative of the fact that the girls were the object of Pinter's surveillance and concern for their activities. Just before this incident, I infer, Pinter, Sr., went out to the parking lot, entered his car, drove up to Barber and spoke to her, and then pulled back into his parking space and reentered the building.

39/ When Pinter spoke to the two employees on January 15, he knew of only these total amounts (Respondent's Exhibit 7). It subsequently developed that Pagliarulo had made additional calls to a cousin, but the time at which Pinter traced this down is very unclear.

40/ It is worth noting that while Robert Pinter testified that Respondent's "policy was no personal phone calls except in emergency," the preelection letter of February 19, 1975, signed by him states, "[W]e recognize that personal calls are made, and frankly we shut our eyes to this if the calls are reasonable in number and in duration."

41/ Employee Schulz credibly testified that about January 24, Robert Pinter approached secretary Delores Fletcher and jokingly told her that she had "nothing to worry about" with regard to her phone calls. The January 15 investigation had shown that Fletcher had made six calls, for a total of 20 minutes. The record also shows that Fletcher was one of the four employee participants in a victory party held by the Pinters on the night of the election.

42/ While he insisted at the hearing that he saw only Barber, in other testimony Pinter, Sr., slipped by recounting that he returned to the office to tell his son that "they" were still on the premises if he wanted to call "them" in.

43/ Pinter said he did not recall whether he spoke with Sinclair that evening.

While Pinter, Sr., testified that he did this because he remembered that he had to do something and also to tell his son that "they" were still outside so as to obviate the need for sending telegrams, it seems more likely that his reentry was sparked by his having identified Barber and Pagliarulo as being present in the parking lot. He then waited and asked Sinclair about her being approached. Thereafter, admittedly for the first time in the memory of both Pinters, telegrams were sent to the two girls, discharging them for "violation of company policies," an action contrary to Robert Pinter's own testimony that he told the two that he would await the results of the September and October surveys and contrary to the company's 45-year policy of orally notifying employees, shortly before closing time on Friday, that they were to be discharged.

Robert Pinter gave two intertwined reasons for the unprecedented use of telegrams. [44] He said that termination of an employee normally would have been handled by Jacoby, but he was being phased out of his duties, and the girls had left by the time Pinter thought about the matter. This is either irrelevant or erroneous, depending on which version of the decision-making process given by the Pinters one chooses to believe. If, as Joseph Pinter stated, the decision was not made until the end of the week, on Friday evening, at a time when Barber and Pagliarulo had already left, then the fact that Jacoby was no longer performing such functions simply has nothing to do with the failure to give oral notification. If, as Robert Pinter alternatively testified, the decision was reached on Wednesday or Thursday, "definitely" in consultation with Jacoby, there is no apparent reason why Jacoby did not routinely handle the terminations on Friday night, since the record is clear that Jacoby continued to play an active role as office manager until the following June. [45]

Even more peculiar is Robert Pinter's reaction to his father's alleged suggestion, upon returning from the parking lot, that since "they" were still on the premises, Robert could call "them" in and discharge them, instead of sending telegrams. It is difficult to understand why Robert would have decided against oral notification of termination, the traditional practice, and decided instead to forge ahead with the telegrams (an unnecessary expense which may be sharply contrasted with Pinter, Sr.'s, subsequent remonstration to Lufker about making two xerox copies of a document when one would suffice, to be discussed *infra*.)

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[44] "The reason I sent them, in the past Mr. Jacoby had handled these matters and he was in the process of getting ready to retire and relinquishing some of these responsibilities, so I sent the telegrams" (Tr. 958).

"Well, actually the reason for the telegrams was Mr. Jacoby had handled most of this and before I realized that they had left, so--I was busy doing something else" (Tr. 1039).

In contrast to Robert Pinter's first given testimony above, see his father's testimony that until May 31, Jacoby "still performed the same duties he had done for the past 35 years."

[45] Robert Pinter's testimony was less than consistent in other areas. An example is his triple-shift testimony as to when he discovered that one of the numbers shown on the telephone survey belonged to Pagliarulo's cousin. See Tr. 955, 1058-1059, 1060.

Equally inexplicable are the senior Pinter's dual reasons for not personally informing Barber and Pagliarulo of their decided-upon termination. The man who did not "talk to people in the parking lot on matters of that kind" admittedly had no compunctions about informing Barber, Healy and Gulbrandsen about their release at the timeclock on Monday morning. The alternative reason--"I wanted to talk to my son first. He was the one who was handling the situation from the beginning"--makes no sense: if father and son had just discussed the matter and conclusively determined to send telegrams firing the girls, why would Pinter, Sr., have need to further consult his son?

Much more likely an explanation is that, having definitely ascertained the presence of the girls in the parking lot, apparently in the process of continuing to solicit for the Union, Pinter, Sr., returned to the office and advised his son that the warning of January 15 had had no appreciable effect and that it looked as if the union effort was spreading to the night shift. On the basis of that news, and without further regard to the expected phone surveys of September and October which he had admittedly earlier mentioned to the girls as his predicate for any action, 46/ Robert Pinter then sent the telegrams firing the trained and experienced employees with nearly 6 and 7 years of seniority apiece.

My conclusion as to Respondent's motive is further supported, I believe, by the early morning events of January 20. Barber and Pagliarulo both testified that when they separately encountered Pinter, Sr., he said that they had been discharged because "business is slow." At this, Pagliarulo pointed to the inconsistent text of the telegram, referring to "violation of company policies." Pinter, Sr., then referred her to his son for an explanation.

The senior Pinter denied telling the girls that they were released because business was slow. To Pagliarulo, he testified, when she came in "quite disturbed," he said, "Look, I don't know anything about it. I don't know what's in the telegram. If you want to know anything about it, ask my son Bob." The underlined portion of the foregoing strongly suggests that, as she testified, Pagliarulo did in fact make reference to the language of the telegram, and most likely did so in the context of questioning an inconsistency between that language and what Pinter, Sr., had just said to her. 47/

46/ Robert Pinter testified that when he spoke to Pagliarulo on January 20, he said, " . . . You told me that September and October would be worse so I felt no reason to wait any longer before terminating you," and also said, "you are unhappy in what you are doing." By Pinter's own testimony, however, neither explanation would apply to Barber; he says she just "shrugged her shoulders" when asked about the prospect of the September and October surveys, and he testified that he "didn't watch Vera at all" in the period between January 15-January 17.

47/ On brief, counsel for Respondent quotes Emerson: "Consistency is the hobgoblin of small minds." To be more precise, the quotation is "A foolish consistency is the hobgoblin of little minds." Expecting an employer to recall from Friday to Monday the reason for discharge of two longtime employees does not seem "foolish."

Also striking was Pinter's testimonial explanation of why he directed Pagliarulo to speak to his son. When questioned about this at the hearing, he said, "Since Bob made the decision, I wanted--I didn't want any conflicting stories." It is not clear why Pinter, Sr., would state that his son had "made the decision," since, according to both son and father, the latter had been consulted on either Wednesday or Thursday, and then again on Friday, about the termination of the girls, and young Pinter noted at the hearing that he would not take any action without consulting with his father. The reference to not wanting "any conflicting stories" raises justifiable suspicions. Pinter, Sr., testified that he had no doubts in his own mind as to why the girls were discharged. In view of the asserted prior discussions about the reason for releasing the girls, a desire to avoid "conflicting stories" intimates that the reason for discharge was not as clear as the Pinters' testimony would have it.

While the testimony of the Pinters more often than not attributed the two discharges to the phone survey results, 48/ there seems to be lurking in the shadows a claim of partial motivation based on economic conditions. The record shows that there had been a decline in business, but the Pinters made it plain that the sine qua non of the discharge of Barber and Pagliarulo was the excessive use of the company telephones. For the reasons discussed above, I find that reason to be spurious, and I further find that the evidence amply supports General Counsel's contention that Barber and Pagliarulo were discharged for engaging in activities on behalf of the Teamsters, in violation of Section 8(a)(3) and (1) of the Act.

Analysis and Concluding Findings as to Healy and Gulbrandsen

The General Counsel's evidence regarding Healy and Gulbrandsen is not as cogent as that relating to Barber and Pagliarulo, because there is no solid demonstration that Healy and Gulbrandsen played any role in the union campaign which would distinguish them from the other employees who had signed cards or talked about the Teamsters. Charlotte Destefanis and Joanne Berderane, not Healy and Gulbrandsen, were with Barber and Pagliarulo in the parking area on the evening of January 17. Lufker testified that she heard Jacoby, after the fact, connect only "those two girls" who were "fire[d]" with the union effort. Joseph Pinter referred in his March 24 speech (and in some preelection letters, discussed infra) only to Barber and Pagliarulo as the catalysts for the Union.

On the other hand, the circumstances surrounding the layoff of these two employees strongly imply discriminatory intent. I credit the employee testimony that at the January 10 meeting, Joseph Pinter had mentioned the business slowdown 49/ and had said that if things got bad enough, which he doubted would occur, he would consider a 4-day week rather

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48/ At one point, Robert Pinter said that was the "main reason . . . and as far as I am concerned the only reason."

49/ Pinter testified, however, that business is traditionally slow in December and January.

than letting the "least senior employees go." Ten days later, on January 20, however, not only had the 4-day week concept been discarded, but the two employees were laid off out of seniority. Healy had, as of then, been employed for over 2 years and was senior to five employees beside Gulbrandsen (of those five, we know the date of hire of McDermott only-according to Gulbrandsen, she was hired in September 1974). Gulbrandsen was hired in August 1974, and was thus senior to McDermott. Of the possibly five or six employees laid off since the March 26 election, 50/ Robert Pinter testified that, "to the best of my knowledge," they were laid off by seniority. He further testified that "most of those jobs were, you know, on an equal plane," and that "at least one of [Healy and Gulbrandsen]" could have performed the work being done by those with less seniority who remained employed on January 20. 51/

Taking into account the foregoing inconsistent regard for seniority in a context of interchangeable jobs (including the fact that newly-hired employee McDermott was performing the very job once done by Healy); the undisputed testimony of Healy that her desk was located only 6 feet from that of Robert Pinter and that she sometimes discussed the Union at her desk; 52/ the inconsistencies in, and contradictions between, the testimony of Robert and Joseph Pinter as to the circumstances leading to the layoff of the two employes, as previously discussed, including the very imprecise and unpersuasive testimony as to why these two were chosen; 53/ the Respondent's general antiunion animus displayed in the discharge of Barber and Pagliarulo; the fact that since 1930 Respondent had not laid off an employee for economic reasons; the fact that the 1974 reduction of the platform force was accomplished by attrition rather than layoff; the significant factor of timing; 54/ and the specific inference arising from

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50/ The record is unclear on the precise figure.

51/ Healy was a file clerk. McDermott performed the same work function which had previously been done by Healy; Gulbrandsen testified that she had also done similar work. Robert Pinter did not say that Healy and Gulbrandsen were chosen because their departure would realize the largest cost saving, but rather said that they were the most expendable.

52/ Although she could not say that Pinter had been present when the discussions were held.

53/ Robert Pinter testified that much of Healy's work was being done by the computer, but that fact clearly would have been realized before January 20. The decision to transfer Gulbrandsen's work to the dispatchers, who would "do it much more efficiently," also seems to be an inexplicably sudden insight.

54/ Robert Pinter testified that management discussion of possible layoffs had begun in November 1974. No action was taken until January 20, just before the Union made its demand. "The abruptness of a discharge and its timing are persuasive evidence as to motivation," N.L.R.B. v. Montgomery Ward & Co., 242 F. 2d 497, 502 (C.A. 2); accord, N.L.R.B. v. Dorn's Transportation Company, Inc., 405 F. 2d 706, 713 (C.A. 2).

the peremptory manner in which Joseph Pinter ordered business agent Schneir, Barber, Pagliarulo, Healy, and Gulbrandsen off the premises on January 20, I believe that the evidence establishes that the layoffs of Healy and Gulbrandsen were a product of discriminatory selection.

While Respondent had told the employees on January 10 that, although it was unlikely, there might be a retrenchment of some sort, the precipitous layoff of the two on January 20—just 10 days later, before the January operating figures had been calculated; out of seniority; without warning; and exquisitely close to the terminations of Barber and Pagliarulo--strongly suggests a discriminatory motive. I have examined Respondent's records, offered to show the economic need for a layoff (Resp. Exh. 10). A comparison of the period May - December 1973 to the same period in 1974 shows that the average monthly operating ratio (expenses to revenue) for that period had risen slightly, from .919 to .924. On the other hand, a comparison of the months December and January, 1973-1974, to the same months in 1974-1975, which Robert Pinter testified was the only meaningful basis for comparison, shows that the operating ratios had actually improved in the latter months. While Respondent would stress the total average rise, from .902 to .934, for fiscal year 1974 to fiscal year 1975, the latter figure is skewed by the sharp increases in the months of February, March, and April, 1975—experience occurring only after the layoff of the two employees.

In the given circumstances, and despite the absence of a showing that Healy and Gulbrandsen were leaders of the union movement, but taking into account Respondent's undoubted knowledge of the activities of its employees, I believe that the evidence preponderates in favor of a finding that they were laid off for prohibited reasons.

B. The Alleged Constructive Discharge of, and Discriminatory Refusal to Rehire, Doris Bonadonna

During the hearing on the original complaint, the name of Doris Bonadonna was mentioned as one of the group of employees who had participated in the organizing activities. Bonadonna first entered Respondent's employ on April 4, 1966; her employment terminated on September 5, 1975, after 7 days of hearing had been held in this case, in the circumstances described below.

Bonadonna worked in the accounting department, on the second level of the building, under the supervision of controller Charles Brown. On Friday, August 15, before Brown left for a week's vacation, he instructed Bonadonna and his other employees as to the duties they were to perform. Brown testified that he told Bonadonna that her "main job" was to "help Doris Miller in learning her job" and "she was to be free in case someone was out sick, or [required] to appear in court."

Bonadonna testified that on Wednesday, August 20, downstairs supervisor Catherine Turk asked Bonadonna to help out downstairs if she had the time. About 45 minutes later, having completed her own work, Bonadonna went downstairs and helped Turk until about 4:45. Turk then asked her to help out the following day, but Bonadonna did not work that day, due to illness.

On Friday, August 22, while engaged in her normal duties, Bonadonna was called into the office of Joseph Pinter, Sr. Robert Pinter was also present. Both had been in attendance at the hearing in this case on August 20. According to Bonadonna, during the following conversation, Joseph Pinter spoke in a "very even tone" and Robert Pinter spoke "sometimes a little higher pitched."

Bonadonna testified that Pinter, Sr., asked her what right she had to work downstairs on August 20. She told him that Turk had initiated the move, and Pinter, Sr., said he had already asked Turk about the matter and had been told that Bonadonna's trip downstairs had not been authorized by her. Each Pinter then serially asked Bonadonna why she had acted without permission, and Pinter, Sr., said she should have inquired of the girls upstairs if they needed help. Bonadonna replied that the computer was broken and she did not think any help was needed upstairs.

Pinter, Sr., said that Doris Miller had a pile of work to do. Bonadonna said that Miller was slow and that Brown had known prior to going on vacation that Miller's work had piled up. She said that if he had wanted Bonadonna to help her perform her work, he would have told her so, but "Charlie probably figured that if I keep helping her she would never be able to do the work." 55/ Robert Pinter then mentioned that Pat Ossenfort had been out on August 20 (at the hearing) and Bonadonna said that she had not thought of performing Ossenfort's work.

Robert Pinter asked if she did not agree that her action constituted "harassment" of management. Bonadonna said that she did not, telling the Pinters that she might understand their attitude if she had avoided working on the day in question, but "I worked hard. And I'm a damn good worker."

Bonadonna began to cry because she was upset and nervous. Pinter, Sr., told her that her work was not in question and that Brown had always told him that she was a good worker. Pinter, Sr., then asked if he had ever spied on her. She said that she did not know of any spying. He then asked if he had spied on any of the other girls. When she indicated that she did not understand, he asked if he had ever stood in the hallway and spied on the girls. She said she did not know. Pinter, Sr., then inquired if he had ever harassed her. She said yes. He asked "When?," and as she was about to tell him, Robert said, "All you girls do is lie. You are all liars." He asked if she wanted to see the "affidavits from the hearing" and kept saying that he wanted her to read the "affidavits," and she kept replying that she knew nothing about it. He referred again

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55/ Miller was still in the process of learning certain work formerly done by Vera Barber.

to the "lies" that were voiced at the hearing and said he was sure her friends had told her about the hearing. She stated that she had been told and then said, "Do you want to know if I signed a card for the union? I did" (adding the last phrase before Pinter managed to say, as he did, that he did not want to know).

Pinter then mentioned Linda Schulz being late, and that he hadn't said anything about her lateness while "this was going on" (except 1 day when he could not restrain himself), but that the next time she was late he would fire her. Pinter, Sr., then referred to the girls spending too much time in the ladies room, and asked if she did not think this constituted harassment, and this question was explored. At some point, Robert Pinter said that the girls coming back late from lunch constituted "harassment," and stated, "I did not say anything, I was real nice while this whole thing was going on. I have it all written down. Now that's over, you just wait and see the changes with me." At another point, Pinter, Sr., asked if Brown had asked her to do "any filing in the kitchen" when she had the chance; Bonadonna said that she did not understand the question.

The Pinters then inquired about an incident on the prior day when Linda Schulz and Judy Basick had been in a restaurant and had walked out when Pat Ossenfort and Claire Dorr had entered. Bonadonna pointed out that she had been home sick the previous day, and Pinter said that he had not asked why she was out. There was some discussion about this attitude, with Robert telling her that her friends were "liars." Pinter, Sr., then said that when Brown returned on Monday, "this will all be straightened out."

Robert Pinter said, "We let ten girls go and if Charlie doesn't have enough work to keep you busy upstairs, I guess we don't need you, we can let a few more girls go." At that point, Bonadonna stood up and said "I quit. I'm sick. I'll give you two weeks notice." Pinter, Sr., went to the door and said, smiling, "If you're sure that's what you want, that's fine with me." 56/ Bonadonna went to her desk, then returned to Pinter, Sr.'s office, said that she did not feel good, and asked to go home. He approved the request. The conversation lasted about 40 minutes, according to Bonadonna.

The following workday, a Monday, she told controller Charles Brown that she had been upset and had not meant to quit, and that she had prepared a letter to Pinter retracting her statement. Brown said he would talk to Pinter, Sr., and she should bring her letter to him later on. Subsequently, she went to see the elder Pinter, said she did not mean to quit, and handed him the letter. He read the letter, returned it to her, and then said, "How would that look if I took you back? It would look--after you told everybody that you quit, it would look like I needed you." She said that she understood, and left the office.

56/ Bonadonna's affidavit shows that she was uncertain how Pinter phrased this. He may have said it was "okay" or "good."

About August 30, she mailed the letter to Pinter. On September 3, he called her into his office. Robert Pinter and Pinter Sr.'s secretary were present. Pinter, Sr., said that they had reviewed the letter and could not accept her retraction. She terminated employment on September 5.

Bonadonna testified that she was "crying" and "very upset" throughout the conversation. At the hearing, she was plainly overwrought, and had to pause to compose herself at a few points. Bonadonna is a noticeably nervous and emotional person, and Respondent's witness Brown testimonially confirmed that impression. Bonadonna testified that she sat at a desk in front of Robert Pinter for 2 years, and that when she works, her "whole body is moving, I work like a maniac"; she further testified that she was certain that the Pinters were aware of her nature. On one occasion, some 4 or 5 years prior to 1975, Robert Pinter had called her into his office because of a disagreement between her and Brown about performing a certain duty, and she had become "very upset" on that occasion.

Joseph Pinter, Sr., testified that he had heard that Bonadonna and Lufker had come to Turk on August 20, told her there was no work to do in their office, and asked Turk if she needed them downstairs. Accordingly, on August 22, the next day that Bonadonna was available, he called her in for a conversation which, he testified, lasted no more than 15-20 minutes. He says that she admitted coming to Turk and telling her there was no work upstairs, and that she conceded that she had not asked any of the upstairs girls if she could help them, saying that since the computer was broken, they needed no help. He replied that the breakdown in the computer ought to have created more work. He told her that they were shorthanded upstairs (particularly since Charles Brown was on vacation and Pat Ossenfort at the hearing on August 20), and there was no reason why she should have come down and said she had no work to do.

Robert then mentioned something about having to look at the matter from management's viewpoint, and Pinter, Sr., told her he thought he had treated the girls very well. He asked if he had ever harassed her, and she replied that he had done so once, but she did not wish to discuss the occasion. Robert then talked about being harassed by the employees, and bending over backward, on instruction of counsel, not to chastise the girls for derelictions of duty. At that point, Bonadonna "started to whimper a little bit and she said, 'I've had enough of this. I quit, I'm giving you two weeks notice.'" Pinter, Sr., so he testified, quickly ascertained the date upon which the two weeks notice would be effective by looking at a calendar, and then told her, "Don't be hasty. You don't have to go to that extreme just because you're a little upset." Bonadonna said "no" and left the office. As she walked in the hallway where his secretary was located, Pinter, Sr., called out, "Are you sure, now, you want to give us two weeks notice," and she said she was.

Pinter, Sr., testified that when Bonadonna sought to rescind her resignation on the following Monday, he thought it over, then called her in and said he could not permit it, since she had told three other girls about the resignation, and "I can't be placed in that position, taking you back, because it would look as though you had something on me, and I had to take you back."

I found Bonadonna's account of the conversation to be more credible than the one given by Joseph Pinter. 57/ I base this conclusion not only on the demeanor of the two witnesses, but also on the likelihood of what occurred. I do not believe, for example, that at the end of the brief conversation described by Pinter, Bonadonna would have begun to "whimper a little bit" and immediately resign a job she had held for 9-1/2 years; I feel certain that it would have taken a steady barrage of haranguing to provoke such a denouement.

Pinter's responses on cross-examination were also marked by evasiveness, inconsistencies, and inability to recall. A notable example of the untrustworthiness of his testimony was the variance in his descriptions of his efforts to ascertain what the work situation had been on August 20. Initially, he testified three times that before he spoke with Bonadonna on August 22, he had investigated the incident by speaking to Catherine Turk, Claire Dorr, Doris Miller, and his secretary. Later, however, he testified that he "didn't speak to either one of the girls upstairs [Dorr and Miller] to ask them how much or what work they had . . . I think there again my secretary gave me this third or fourth-hand . . .the reason I didn't ask anyone was because I wanted to wait until Charlie Brown came back Monday to find out what his instructions were before he left for vacation." 58/

I further conclude that the General Counsel has satisfactorily established that Bonadonna was unlawfully terminated. The reason advanced for calling down Bonadonna on August 22 seems the slimmest kind of premise. Bonadonna testified that supervisor Turk asked her to help out downstairs on August 20, and that she cooperatively did so. While Pinter testified that Turk had told him that Bonadonna, not Turk, had made the request, Turk, although still in Respondent's employ at the time of the hearing, was not called as a corroborating witness.

Pinter, Sr.'s obvious failure to investigate the matter and the extent of the upstairs need for Bonadonna at the time Turk asked her to come down, make Respondent's motive necessarily suspect. The record in fact appears to show that there was little need for Bonadonna to assist in the work of other employees. The computer was out of commission for want of a missing file. While Claire Dorr's time may have been occupied by having to deal with the IBM servicemen, there is no firm evidence that Bonadonna could have performed, on August 20, any of Dorr's work. Brown further testified that he knew "for a fact" that "Claire would not ask for help." It may have been that Doris Miller had work to do, but Brown conceded that he had told Bonadonna that, in teaching Miller her job, "she should attempt to make sure that Doris Miller does the work herself for the most part, so she would learn the job." At any rate, it is basically irrelevant whether Bonadonna could have worked in the upstairs office on August 20, because, as I find, supervisor Turk had requested her help downstairs, 59/ and her agreement to do so seems a perfectly appropriate response.

57/ Robert Pinter did not testify on this issue.

58/ On cross-examination, Pinter testified that he did talk to Brown on Monday about the matter, and Brown told Pinter he had left instructions, but "I didn't ask him what they were."

59/ Pinter, Sr., conceded that downstairs employee Linda Casilli was not at work at the time.

So appropriate, in fact, that it is difficult to conceive a legitimate reason for the confrontation with Bonadonna then arranged by Respondent's president and its chairman of the board. Having observed Bonadonna on the witness stand, I am certain that Robert Pinter, who sat at a desk near Bonadonna for 2 years, must have been aware that she is a highly emotional, nervous, and hypertense individual. The same awareness must surely be attributed to Joseph Pinter, whose testimony throughout showed an extremely keen awareness of the dynamics of the office. Despite this certain knowledge of her nature, and despite the fact, as Bonadonna credibly testified, that she began breaking down early in the conversation, the Pinters, instead of merely criticizing her for what could, at worst, be described as a mistake in judgment, continued to hammer away at Bonadonna about matters totally irrelevant to her purported judgmental error.

I think it most likely that they were playing on her fragile nervous system in the hope of provoking her to do precisely what she did--offer her resignation. At the point at which she did so, according to Bonadonna, Pinter, Sr., went to the door with a smile on his face, saying "If you're sure that's what you want, that's fine with me." Pinter's testimony seems even more plainly to indicate that he had achieved the desired result: he testified that as soon as she gave 2 weeks notice, "I pulled out my calendar and I said that's September so-and-so and she said yes." Only after settling the termination date did Pinter inquire into Bonadonna's certainty about her decision. This unseemly haste about arranging Bonadonna's departure date convincingly suggests that her termination was the object of the exercise to begin with.

Motivation for Respondent's desire to rid itself of Bonadonna is apparent in the record. The earlier hearings had produced mention of her name as a participant in the unionizing effort. Pinter also admitted that he had "seemed to sense" "strained feelings" among the upstairs employees after the election, at which time, he had heard, Bonadonna had refused to drive Ossenfort to and from work as had been her custom. That the Pinters harbored resentment toward Bonadonna was disclosed by the telling testimony of Respondent's witness Claire Dorr. On cross-examination, she revealed that on the evening of the March 26 election, she had dinner with the two Pinters, Dolores Fletcher, Doris Miller, and some others. Joseph Pinter stated on that occasion that he was "very hurt by [Bonadonna's] actions . . . [t]hat she would turn on him like that." According to Dorr, Pinter did not express similar disappointment in any other employee.

Bonadonna's prounion activity as an animating force in the whole affair is made the more obvious by the value of Bonadonna's service and the circumstances surrounding Respondent's refusal to take her back. As Brown testified, Bonadonna was "an asset" to his department; she was "a very efficient worker" who "worked all the time"; she was "familiar with all phases of the accounting department"; she was "always a very good worker"; and he had told the senior Pinter "a number of times that she was a good worker." The record shows that when Bonadonna left, she was replaced by a new employee. And yet, when Bonadonna attempted on Monday to rescind her resignation, Respondent refused to consider rehiring this obviously valuable and experienced employee of more than 9 years tenure and opted instead to hire a new employee, untested as to work skills or attitude and unfamiliar with the operation.

The reason given by Pinter, Sr., for refusing to allow her to rescind her resignation, as Bonadonna credibly testified on direct and cross, was that taking her back "would make people think that I needed you." This seems to me a nonsensical reason for jettisoning this valuable resource. But even if I were to credit Pinter's version of his stated reason for refusing--that he told Bonadonna that he could not take her back because three other girls were aware that she had resigned and "I can't be placed in that position, taking you back, because it would look as though you had something on me, and I had to take you back" 60/--I find this reason at least as unconvincing. Permitting an employee to rescind her resignation and come crawling back would hardly give rise to an impression of blackmail, and I cannot believe that Pinter engaged in such a thought process. As indicated, on cross-examination, Pinter referred to a second reason about setting a bad "precedent" which he had failed to mention in his first account of the conversation on direct examination.

In ordinary circumstances, would Respondent's president and board chairman, with some 170 employees under their control, have spent 40 minutes beleaguering a veteran and esteemed employee, known to be easily moved to distraction, simply because, at the request of a supervisor, she had spent part of 1 day working diligently in the downstairs office? I think that, in ordinary circumstances, this never would have occurred, or, if it had, the discussion would have been terminated when the employee became emotionally upset. The circumstance which made this situation extraordinary, and which kept the Pinters pressing on after Bonadonna began crying was, I infer, Bonadonna's known activities on behalf of the Union. I believe that the Pinters accomplished what they intended--Bonadonna's emotional surrender, in the form of her resignation. And for the reasons discussed above, it is impossible to conclude that the Respondent's refusal to reinstate this palpably useful employee was anything but a further manifestation of its determination to effect her permanent separation from the other employees. 61/

I conclude, accordingly, that the termination of Doris Bonadonna, and, as alleged in the complaint, Respondent's subsequent "fail[ure] and refus[al] to reinstate or offer to reinstate" her, were both violative of Section 8(a)(3).

60/ On cross-examination, Pinter added a second reason, which had not appeared in his first version of the conversation: "Besides, I also told her we couldn't have everybody just quitting and coming back. It would set a precedent, which I didn't intend to set."

61/ The inordinate concern which Respondent exhibited about Bonadonna working downstairs is suggested by the testimony of Brown that, while on a camping vacation in the mountains during the week of August 18-24, the news of the computer problem had been brought to him by motorcycle messenger. Despite the obvious importance of the lost accounts receivable data, Brown testified that when, on Monday, "I walked in, I was expecting to hear about that, but Bob Pinter had mentioned to me that Doris had left her assignment or left the office to work downstairs."

C. The Alleged Discrimination against Diane Lufker

As previously discussed, at the August 18 hearing on the original complaint, employee Diane Lufker gave damaging testimony against Respondent. In the second complaint, consolidated herein, the General Counsel charges that Respondent thereafter retaliated against Lufker, as described below.

1. The alleged harassment by Joseph Pinter, Sr.

Lufker, an upstairs employee, testified that on August 20, because of the computer problem which slowed down the flow of work to her, she approached downstairs supervisor Turk at about 3 p.m. and offered to help her out. Turk accepted the offer. The following morning, while Lufker was making photocopies of a document for supervisor Hunt, Joseph Pinter, who appeared "very upset," came to the xerox machine, asked her what she was copying, grabbed the document off the machine, told her she was doing the job incorrectly, and showed her how to perform the work.

About 30 minutes later, Pinter, Sr., came to Lufker's desk and asked if the checks on her desk were all from the day's mail. She told him that some of them had been collected by the drivers the previous night. He then asked if she had any other checks in her desk; when she said she did, he asked why they had not been deposited. She explained that the checks did not have "references," and she required information about them from the computer, which had been down. Pinter then asked what she had done with the copy of the document she had earlier made for Hunt, and she gave it to Pinter.

That afternoon, having run out of work about 3 or 3:30 p.m., Lufker went downstairs and again asked supervisor Turk if she could be of assistance in her department. Turk went to speak to Pinter. Pinter came out of his office, inquired of Lufker as to whether she had asked the girls upstairs if they had any work for her, asked why she was not speaking to the girls, and said "if I did not like it here, I knew where the door was." Before he returned to his office, Lufker asked Pinter if she could help Turk if the upstairs girls had nothing for her to do, and he said "Of course."

Lufker returned to her office. She sought and received about 15-20 minutes work from Doris Miller, and made phone calls for Ossenfort for 20-25 minutes. Having nothing further to do, she headed downstairs and encountered Pinter. He asked if the girls had given her any work and was told that they had. He inquired why she had not asked them for work before; Lufker said that she really had not thought they needed her help. Pinter said, "Why didn't you open your mouth? You always seem to open it at the wrong time." She returned upstairs.

Lufker testified, without contradiction, that Pinter, Sr., had never evinced a direct interest in her work prior to August 21, and that she had previously performed work for Turk on "more than one" occasion. She further testified that when she went to help Turk on August 20, all of her accounts receivable were not posted, but that she could not accomplish that work because of the condition of the computer.

Joseph Pinter testified that the reason he talked to Lufker at the xerox machine was because she was making a photocopy of each side of a document which consisted of two adding machine tapes stapled together. Pinter pointed out that she could remove the staples and thus copy both sides with a single picture--"That was an awful silly waste of time and money." 62/ On cross-examination, he amplified his reason for being upset at Lufker: "Well, there was another reason. There's another xerox machine on the second floor. She didn't have to come down to this floor to do that job." 63/ Pinter said, on cross-examination, that he did not recall any conversation with Lufker at her desk that day concerning checks.

As to the afternoon conversation, Pinter substantially corroborated Lufker's testimony, but, somewhat equivocally, denied having told Lufker that she had a "big mouth" at times. 64/

Controller Charles Brown testified that, prior to leaving for vacation, he told Lufker that she should do her accounts receivable work as usual, and also "to start working with Pat Ossenfort to get the hang of the job." As indicated, Ossenfort had not been in the office on August 20.

The evidence establishes, to my satisfaction, that on August 21, in the words of the complaint, Respondent "subjected its employee Diane Lufker to closer supervision than she previously had been given," primarily, I think, because she testified adversely to Respondent on August 18. The testimony is uncontradicted that Joseph Pinter had never previously criticized or inquired into Lufker's work; for him to do so twice on August 21, particularly with regard to the trivial xerox machine incident, and blurting out during the day that she always seemed to open her mouth "at the wrong time," 65/ clearly indicates that his intensified surveillance of her work was related to his anger at the testimony given by Lufker on August 18. Accordingly, I find that by such conduct, Respondent violated Section Section 8(a)(3),(4) and (1) of the Act.

62/ It would seem that removing the staples and then replacing them would in fact consume more time and, hence, money.

63/ There is no evidence regarding whether the upstairs machine was in use at the time, and no testimony by Pinter that he asked Lufker about the reason for using the downstairs machine.

64/ A. No, I never said that.
Q. At any time?
A. Not to my knowledge.

65/ My observation of Joseph Pinter led me to believe that he is quite capable of saying such things, despite any admonition that he should be cautious and restrained.

2. The alleged discrimination with respect to Respondent's lateness and sick leave policies

The second complaint alleges that Respondent discriminated against Lufker because of her testimony against Respondent in this hearing, by changing its sick leave and lateness policy, resulting in a loss of work for her.

In August, Lufker began undergoing medical treatment. She did not work on August 11, the day of her first appointment, taking the entire day as sick leave (which was unpaid).

During the last week in August, which would be after her initial testimony in this proceeding, she had a second appointment. 66/ On the morning of that appointment, she told Charles Brown that she would be leaving about 2:30 p.m. for her 3 p.m. appointment. Shortly before she left, Brown asked if she would be visiting the doctor for subsequent treatments. She told him it was possible. He replied that if she had to go again, she would be required to take the entire day off.

On the morning of September 9, Lufker called Brown at about 8:20 a.m. to tell her that she would not be able to report at the starting time of 8:30, but would be in before 9 a.m. Brown said, "I don't think Mr. Pinter will let you work today," and told her to call back in 5 minutes. She said that she wanted to work, and that she would come in and see what happened; Brown concurred.

When Lufker arrived at 8:45, her timecard was missing, and Brown told her that she could not work that day "because I was late, that my lateness and my absenteeism is terrible." Brown said, "I can't let you work today because you can't give me an 8-hour day"; he also said he "wasn't just referring to me; this applied to everyone in the office." She then told him that she had a medical appointment the following day at 1 p.m., and he said she must take that day off also. Brown pointed out that "it's been very hard on me especially since Doris Bonadonna is no longer with us." Lufker asked why, in view of that, she could not work; Brown replied, "[B]ecause you can't give me an 8-hour day." She reported for work on the morning of September 10, but Brown would not let her work that day.

On September 22, she reported to Brown that she had another appointment on September 24 at 1 p.m.; he told her she could not work that day. 67/

66/ Lufker was at first unclear about this date. Respondent's attendance record on Lufker is in evidence. An "A" is written in the block containing the date August 11, presumably meaning that she was absent that day. An "A" again appears on August 18, the day she testified. On August 28 and 29, two more "A"'s appear, accompanied by the numbers, respectively, "4:66" and "5:12." They mean that she worked about 4-1/2 and 5 hours on those dates, and support her testimony that her second appointment was "the last week in August."

67/ She did in fact work on the 24th because her appointment was cancelled.

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On September 30, Lufker informed Brown that she had scheduled another appointment for October 3 at 1 p.m., and asked if she could work that day. He asked if she was "filing charges," and she said she was. Brown stated that they had been through this matter before, and that she could not work. Brown also said that he had examined her records for 1973 and 1974, that they showed that she had been absent at least once a month, and that no company would allow so much absenteeism. Lufker pointed out, inter alia, that other people had left during working hours to see a doctor, and Brown said the only reason that practice had been permitted was because the others would only tell him about their appointment shortly before they were to go, and that he could not very well "chain them to the chairs." On several other occasions after October 3, Lufker was not allowed to work in the morning of the days on which she had medical appointments.

In the past, Lufker testified, she had been permitted to continue to work after having advised Brown, "usually" in the morning, that she would have to leave later in the day for a medical appointment. She further testified that prior to September 9, she had reported late to the office on occasion, but had been permitted to work and also to make up the lost time by working during the lunch hour or after her regular hours.

Charles Brown testified that sometime between September 1-15, Lufker was off part-time for 2 days in a row, 68/ and, although his testimony as to the timing is somewhat unclear, he apparently thereafter asked her if her medical treatments were going to continue. She said she hoped they were over, but he said "[R]egardless, you're going to have to make some other arrangements because you can't have any more half-days. I showed Mr. Pinter your absences and you won't be allowed to work any more part days."

Thereafter, she called in on September 9 and said she would arrive "in an hour,"" and he told her, pursuant to his earlier refusal to let her work half-days, not to bother coming in. In fact, Lufker arrived only about 15 minutes late. He told her she could not work and that she also could not work the following day, due to her doctor's appointment. Brown conceded that there was "a lot of work" available for Lufker to perform on September 10. He also testified that in the past, Vera Barber had been allowed to work despite having had "a course of medical treatments that involved several visits to a doctor," although he eventually spoke to her about making other arrangements, which she apparently did.

In addition, Brown admitted that, prior to September, other employees had been permitted to work despite having arrived at work as late as 1 hour. He testified that in September, he reviewed the whole matter with the other girls in his office "and told them there would be no more half-days."

68/ Brown was evidently referring to the two part-time days on August 28 and 29.

I credit Lufker, whose testimony was substantiated in large part by Brown. Brown's statement to her during the last week in August, shortly after she testified in this proceeding, that she could no longer work on any day on which she had scheduled medical appointments, was carried into effect on September 10, October 3, and other dates. The reason given was that she "can't give me an 8-hour day." The reason does not make much sense; Respondent afforded no compensated sick leave for the part-days on which Lufker was absent, and apparently would have lost nothing by allowing Lufker to work part-time on those days. It is evident that Lufker was needed, as Brown admitted at the hearing. The rule forbidding any work on days on which employees had medical appointments was obviously a new rule; Respondent advanced no sensible reason for promulgating it. I can only infer that Respondent was piqued by Lufker's testimony and created this rule in order to penalize her, clearly a violation of Section 8(a)(3),(4), and (1) of the Act.

I reach the same conclusion with regard to the rule announced on September 9, forbidding Lufker to work that day because she arrived 15 minutes late. Lufker said that Brown told her "I don't think Mr. Pinter will let you work today"; Brown testified that, prior to September 9, and in connection with her medical appointments, he told Lufker, "I showed Mr. Pinter your absences and you won't be allowed to work any more part days." He did not clarify why he had felt the urge to consult Pinter. The 1975 attendance record of Lufker indicates that prior to September 9, she had been absent on 12 days, 5 full days and 7 part days. The only other such record in evidence pertains to Ossenfort; prior to August 20, she had been absent on 10 occasions, 7 of them being full days and 3 being part days. 69/ Prior to her August 18 testimony, Lufker had been absent in 1975 for 5 part-days, without any sanction being imposed.

As described, Brown conceded that, prior to September, employees had not been precluded from working, despite the lateness of their arrival for work. The refusal to allow Lufker to work on September 9 when she arrived 15 minutes late borders on the absurd and is unexplained by any testimony or evidence showing a rash of latenesses which might have rationally provoked such a rule. I conclude that the promulgation of the new rule primarily constituted a reprisal against Lufker's testimony in this proceeding and was violative of Section 8(a)(4),(3), and (1) of the Act.

D. The Alleged Violations of Section 8(a)(1)

1. The refusal to allow the four alleged discriminatees to vote

On the day of the March 26 election, Barber, Pagliarulo, Gulbrandsen, and Healy came to Respondent's premises during voting hours for the purpose

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69/ While Lufker's record shows her first appearance at this hearing as an absence, Ossenfort's does not, since the copy of Ossenfort's record in evidence is only current as of August 20, the day she testified. Thus, Ossenfort, as of September 9, had been absent at least 8 full days and 3 part days.

of voting. The gate leading to the main building was closed. Robert Pinter came out of the gate and told the women that they were on private property and that they should leave. Barber said that they had come to vote, but Pinter said he would not let them in. Warren Mangan, attorney for Local 807, was present; he asked Pinter if he recognized the four women, and Pinter replied that he did. They left without voting. Pinter testified that he refused to allow them to enter on advice of counsel.

The complaint alleges that this refusal violated Section 8(a)(1). 70/

The Section 8(a)(3) charges relating to the four employees were not filed until March 31, 5 days after the election and 10 weeks after the terminations. 71/ When the Respondent furnished the Excelsior list to the Union, it excluded the four ex-employees; the Union raised no objection.

In Macon Textiles, Inc., 80 NLRB 1525, 1549-1550, the Board adopted the conclusion of a Trial Examiner who held that a refusal by a representative of the employer to admit prospective voters to the polling place within the plant constituted a violation of Section 8(a)(1). In that case, the Examiner found that the two employees were eligible to vote (the parties had been unable to agree upon an eligibility list, and had decided instead that "all questionable employees would be permitted to enter the Respondent's property in order to vote"). In a subsequent case, Neuhoff Bros. Packers, Inc., 154 NLRB 438, enfd. 362 F. 2d 611 (C.A. 5), the Board relied on Macon Textiles, holding that "in excluding potential voters from the premises and not letting them cast challenged ballots," the employer violated Section 8(a)(1). The names of the three excluded employees did not appear on the eligibility list; charges had been filed with respect to two of them prior to the election. In deciding that the violation also invalidated the election, the Regional Director had additionally noted, with Board and Court approval, the fact that the "action was taken in the presence of other voters and in an area clearly visible to employees on their way to vote," 154 NLRB at 442; see also 362 F. 2d at 614.

70/ The same conduct is also embraced within one of the objections to the election.

71/ The record is silent as to the reason for the delay. Respondent argues that the failure to promptly file charges suggests that the employees did not believe that their terminations were connected with their union activity. It appears that the Union had reasons of its own for withholding the charges, since it was working closely with Barber and Pagliarulo after their discharge--the former attended and the latter testified at, the representation hearing of February 10, and Barber was still soliciting cards after her termination. It is obvious that, on March 26, the Union and the employees were asserting their right to vote. It might be conjectured that the Union withheld filing charges for fear of frightening other employees and thus prejudicing the election. In Central Freight Lines, Inc., 222 NLRB No. 67, the Board specifically refused to draw an adverse inference from the fact that the charge was not filed until 3 weeks after the termination.

In Ace Letter Service Co., 187 NLRB 581, although not an unfair labor practice case, the Board announced a strict standard for usurpation of the Board's authority to conduct elections. There the names of the excluded employees did not appear on the eligibility list, and the Regional Director found no evidence that the employees were in layoff status, as contended. The Board nonetheless held that its challenge procedure "generally guarantees the right to every individual who asserts other than a totally frivolous claim to employee status to appear at the polls and cast a ballot" and that "by usurping the Board's authority to make that determination [of eligibility], [the employer] interfered with our orderly election processes." Subsequently, the Board set aside an election where an employer excluded employees discharged some 5 months prior to the election, and as to whom no charges were yet pending on the day of the election, on the ground that the Board agent (who had prevented the employees from voting) had been told by counsel for the Union that charges would be filed with respect to the employees. Alabaster Lime Company, 190 NLRB 396.

Macon Textiles, Inc., supra, appears to remain the law. See Aldon, Inc., 201 NLRB 579, 586. 72/ Whether the potential voters were in fact eligible to vote, or whether the employer had some ground for believing that they were not, seems beside the point. 73/ Subsequent resolution of such questions favorable to the employer would not erase the fact that the employer had taken into his own hands the determination of who should be allowed to cast a ballot. Allowing such usurpation could easily augur, in future cases, anarchy at the polls and unnecessary interference with the orderly and expeditious processing of Board elections.

Accordingly, I conclude that Respondent's refusal to allow the four former employees to enter its premises for the purpose of casting ballots is violative of Section 8(a)(1).

2. The alleged surveillance by Robert Pinter and other management agents

Several employee witnesses testified that during the week ending January 19, while they were standing in the parking lot at the end of the day shift, they detected Robert Pinter "crouching" next to a sports car for a period of several minutes, at a distance which might have enabled him to overhear their conversation. The General Counsel charges that, in so doing, Pinter was illegally surveilling the union activities of employees.

Pinter testified that on one occasion during this period, he noticed the brother of employee Santa Stansell sitting in a sports car waiting for her. He and Stansell's brother are acquaintances, and Pinter said he spoke awhile to the brother, having to crouch down to maintain the conversation at eye level.

72/ There the Administrative Law Judge found a violation in the fact that "Respondent arrogated to itself the right to determine their eligibility." While he further stated, "Such action also intimidated other prospective voters," he recites no evidence in support of that proposition, and I take his remark to be conclusionary rather than literal.

73/ In the present case, of course, the employees, being discriminatees, were eligible to vote. East Coast Equipment Corporation and Steco Sales, Inc., 221 NLRB No. 76.

Stansell's brother did not testify. Pinter's account seems plausible. I conclude that the testimony of General Counsel's witnesses is too indefinite and equivocal to support a finding that the allegation of surveillance has been substantiated.

I reach the same conclusion as to other generalized testimony that various managers were seen standing at office windows as the clerical employees were entering and departing the office on a few occasions. The record establishes that it was not uncommon for supervisors to gaze out the windows, and the fact that that they were doing so while the collective activity was becoming more pronounced does not, of itself, indicate that such conduct constituted a violation of the statute.

Accordingly, I shall recommend dismissal of the surveillance allegations of the complaint.

3. The allegations of unlawful interrogation

The complaint alleges that on or about January 17 and January 20, 1975, Joseph Pinter, Sr., and Charles Brown unlawfully interrogated employees concerning their union activities.

I find no evidence indicating that Charles Brown engaged in interrogation in January 1975. The only evidence which might be deemed interrogation by Pinter, Sr., is the testimony of Sinclair that, on January 17, he asked her if "anyone had approached" her in the parking lot. While I have found this testimony relevant to Respondent's knowledge and motive with respect to the terminations, I do not see how it could be considered an interrogation, having coercive impact, about Sinclair's union activites or those of the other employees.

At the hearing, the complaint was amended to allege that, on January 20, warehouse supervisor Lee Brown engaged in unlawful interrogation. Employee Linda Schulz testified that, on the morning of January 20, Brown asked her if she "had heard anything about a union." Schulz replied that she had "heard something mentioned about a union." Brown, whose supervisory status was stipulated, did not testify.

While arguably a violation, I am inclined to conclude that since the interrogation did not inquire into Schulz' own sympathies or those of others, and consisted of only a single question, it probably lacked coercive effect. Accord, Whittaker Knitting Mills, 207 NLRB 1019, 1022, n. 8.

I shall, consequently, recommend dismissal of the interrogation allegations of the complaint. 74/

74/ Employee Destefanis credibly testified that supervisor Catherine Turk interrogated her about the Union and Destefanis' own sentiments. The complaint, however, does not allege any unlawful conduct by Turk; it was not amended at the hearing after Destefanis testified; Turk did not testify; and I cannot conclude that the issue was fully and consciously litigated.

4. The allegations of threats of loss of benefits and other reprisals in March 1975

The complaint alleges that "[o]n or about March 18, 1975, March 24, Respondent by Joseph Pinter Sr. and Robert Pinter ist (sic) agents threatened its employees with loss of pension benifits (sic), establishment of job classifications, and other reprisals if they become (sic) or remained members of the Union, and if they gave any assistance or support to it."

This allegation is based upon preelection letters sent by Respondent to employees and upon speeches made on March 24, one to the day shift clericals and one to those on the night shift. It should be noted that the complaint refers only to the dates of March 18 and 24; Respondent sent out three preelection letters, under date of February 19, March 18, and March 24. In his Report on Objections, dated June 20, 1975, the Regional Director stated that the three letters, relied on by the Union as objectionable conduct, are also included in the instant complaint "as violations of Section 8(a)(1) of the Act," and he accordingly referred them to me for determination. As indicated, however, the February 19 letter is not specifically mentioned in the complaint. It is nonetheless clear from the record 75/ and Respondent's brief that Respondent understood the February 19 letter to be in issue as violative of Section 8(a)(1), and I consider that the question of its legality is ripe for disposition.

a. The letters. The three-page letter of February 19, signed by Robert Pinter, makes the following major points. It tells employees that the Union cannot promise benefits and they should not be "fooled into thinking that having a Union guarantees you a job." It tells them that Respondent's wages, benefits, and working conditions are as good as any in the area. It says that despite the recession, Respondent has "tried to keep everyone working," and it continues:

> You know from your own experience that we have not laid off office employees during slack periods. 76/ Pinter Bros. thinks it owes an obligation to employees to give them job security. No Union can do as well.

The letter goes on to say that union organization frequently results in strikes and loss of wages, and that an employer need only bargain in good faith, without having to surrender to Union demands. Thereafter, the letter states that if the Union "wants (sic) an election and makes economic demands which the employer cannot meet, there is a strike, or the employer finds ways to replace workers and reduce the work staff." The letter then

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75/ See Tr. 684-686.

76/ In view of the abrupt departure of Healy and Gulbrandsen just 4 weeks earlier, it is difficult to imagine what the employees thought of this statement.

discusses Respondent's past and present willingness to settle grievances, and states that "[i]f there have been grievances which have not been settled, we will do our best to see that the reasons for grievances will be eliminated."

The genesis of the organizational campaign is then discussed. Saying "We think we know what started it," the letter goes on, "In every company, there are one or two people who are disgruntled and who do not care much whether your job is safe or not." It discusses the reasonableness of discharging employees who make excessive personal calls. In the midst of this discussion, the letter states:

> You know very well that when costs begin to go up, a Company can only survive by cutting costs. In a trucking business, the cost of labor is the highest cost we have. There is a rule that says labor costs for a local trucking company cannot exceed 60¢ of each $1.00 revenue. Once you get above the 60¢, the company begins to lose money and jobs are lost.

Toward the end of the letter, Respondent says:

> There will be an election. You will be given all kinds of promises. A handful of employees will be trying to persuade you to vote for the Union. They won't tell you about the dues, assessments and strikes, and the loss of jobs.
>
> They won't tell you that a Union can't force an employer to pay more than the employer can afford to pay; otherwise the employer is driven out of business and jobs go down the drain!

The two-page letter of March 18 begins by telling employees that, in the coming week, they "will have a chance to vote for your future with Pinter." A few sentences later, the employees are instructed to "remember that your future, your job and your family's interests are involved in the election." After comparing the Union's probability of delivering on its promises to that of a New York politician doing so, there is again some discussion of the two discharged employees who "began to stir up trouble because they had no interest in your job. They don't care about your family or your future."

The letter then refers to the employees' pension plan as the "best . . . of any trucking company" and states:

> If the Union comes in, will your pension rights be lost? Ask the people who are trying to force you into the Union, what will happen to your pension rights? Don't accept empty promises. Let them show you on paper the effect of the loss of your present pension rights if the Union wins the election.

After noting that the Union cannot guarantee the "steady jobs" and "superior wages and working conditions" which Respondent has "always been able to accomplish," the letter asks employees if the Union has been able to stop unemployment (giving the current rates in New York and New Jersey), tells employees to ask the Union "how many of its members are out of work now," further tells them to ask "the people who are trying to force you into a union to compare the stability of your jobs with the loss of jobs in union plants," and finally asks them to inquire "how many strikes there have been in the last two years and how many jobs have been permanently lost because of strikes." In closing, the letter points out:

> I am sure each of you know that your best interests must be determined by what is best for you and your family. If you lose your job or there is a strike, the Union officials continue to draw their salaries while you are out of work.
>
> And if you are out of work because of strike, you do not get unemployment insurance benefits. Ask the Union to tell you the truth about that.

The March 25 two-page letter purports to be a reply to a Union letter to employees, in which Respondent says the employees should ask the Union "how many truckers have gone out of business in the last years because of the union contracts" and how many drivers have, consequently, lost pension and seniority rights; asserts that the Union has not bargained a single contract which improves upon the employees' present conditions of employment; argues that no union can protect against layoffs; and states,

> The Union says that Pinter Bros. will reach an agreement if the Union wins. That is an empty promise. If the Union wins, the law requires that we bargain in good faith. It does not compel us to reach an agreement. If, in good faith we do not reach an agreement, there will be a strike and jobs will be lost.

The closing remarks include:

> DON'T LET A FEW DISGRUNTLED EMPLOYEES SELL YOU DOWN THE RIVER.
>
> You have an obligation first to yourself and your family. When you enter the voting booth, decide whether you want to gamble on some future promises against what has been solid performance by Pinter Bros. since you have been working here.

In my view, the letters combine threats, an anticipatory refusal to bargain, and promises of benefits in a manner clearly calculated to restrain employees in the exercise of their right to choose union representation. They contain a steady, persistent, drumbeat heralding loss of jobs in the event of unionization. On February 10, the employees were told that "[n]o Union can do as well" as Respondent in the area of job security; they received the ambiguous and sinister message that if the Union wins the election and makes demands which Respondent cannot meet, "there is a strike, or the employer finds ways to replace workers and reduce the work staff" (emphasis added); they were told that the employees who initiated the union campaign "do not care much whether your job is safe or not"; they were cited to the fact that when labor costs rise above 60¢ of $1 revenue, "the company begins to lose money and jobs are lost"; they were informed that the Union would not tell them "about the dues, assessments and strikes, and the loss of jobs"; and they were further notified, in a true non sequitur, that a union "can't force an employer to pay more than the employer can afford to pay; otherwise the employer is driven out of business and jobs go down the drain!" The March 18 letter picked up the theme that the election would give the employees a chance "to vote for your future with Pinter"; noted that "your future, your job and your family's interests are involved in the election"; repeated that the organizers "had no interest in your job" and "don't care about your family or your future"; emphasized a comparison between the loss of employment in organized plants with "the stability of your job"; and ominously referred to what would happen "if you lose your job or there is a strike" (emphasis added). The March 25 letter hits hard on the companies which have gone out of business "because of the union contracts," notes that if agreement is not reached, "there will be a strike and jobs will be lost," warns employees against being sold "down the river," and cautions that selecting a union is a "gamble."

The repeated and wholesale references in all three letters to loss of work are occasionally tempered by fleeting mention of Respondent's duty to bargain in good faith, but, often, they are simply gratuitous (e.g., the March 18 letter, as indicated, conjures up a situation in which job loss may somehow result from other than a strike: "If you lose your job or there is a strike . . ."). But the lip-service paid to the duty to bargain in good faith is effectively cancelled by the overall tone of the letters as well as the specific threat in the final letter: "The Union says that Pinter Bros. will reach an agreement if the Union wins. That is an empty promise" (emphasis added). No clearer manifestation of a fixed determination not to reach agreement could be made. Having read and understood this, the employees likely would tend to disregard the first clause of a succeeding sentence, and ponder only the final prediction as a certain consequence of voting for the Union: "If, in good faith we do not reach an agreement, there will be a strike and jobs will be lost."

The letters could reasonably have been read by employees as indicating that Respondent intended to retaliate against their job security in unnamed ways for selecting a union; that Respondent had already determined that it would not bargain in good faith, thereby making the act of voting for the Union a futile one; and as a warning to the employees that, by voting for the Union, they were jeopardizing their "family and their future" because of the inevitable strike which Respondent's conduct would inevitably bring into being. As in General Automation Manufacturing, 167 NLRB 502, 504, this correspondence, relentlessly and pointlessly harping on loss of work and the uncertainty for the employees' future engendered by selection of a union, "was not an attempt to influence the employees by reason, but was an appeal to fear." A more selective threat is to be found in the reference in the March 18 letter to the loss of pension rights. While the language is initially somewhat coy, it ultimately conveys the message to employees that a union victory will inexorably result in a forfeiture of pension rights, with no indication why this result would have to follow: "Let them show you on paper the effect of the loss of your present pension rights if the Union wins the election."

In *N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575, 617, 618, 620, the Supreme Court admonished that, to avoid being considered threats, employer "predictions" about the effect of unionization "must be *carefully phrased* on the *basis of objective fact* to convey an employer's belief as to *demonstrably probable consequences* beyond his control . . ." (emphasis added); noted that the Board "must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear"; and cautioned the employer that he can easily make his views known without engaging in brinkmanship, "when it becomes all too easy to 'overstep and tumble [over] the brink,'" by "avoiding conscious overstatements he has reason to believe will mislead his employees." *Zim's Foodliner, Inc.* v. *N.L.R.B.*, 495 F. 2d 1131, 1137 (C.A. 7), noted that *Gissel Packing Co.* imposes a "severe burden" on employers to justify the sort of statements made here. I find, applying appropriate standards, that the three letters contained threats of retaliation against employees and a pointed indication that Respondent would refuse to bargain in good faith. *Gilbert International Inc.*, 213 NLRB No. 89.

I also find that the following statement in the February 19 letter constituted an unlawful promise of benefits:

> If there have been any grievances which have not been settled, we will do our best to see that the reasons for grievances will be eliminated.

The foregoing means nothing less than "if there is anything you want which we have denied you up to this point, we will give it to you if you will forego this union." While unspecific, it seems to me to be as clear a promise of benefits as any employer preelection offer of described benefits which the employees have not, until the union reared its head, previously enjoyed. See *Alberts, Inc.*, 213 NLRB No. 94, ALJD pp. 10, 12, where the Board found a violation when the employer asked an employee "if she had any problems, asked her to submit her problems to him, and stated that he was so advising all the other employees in the store"; *Plastic Composites Corp.*, 210 NLRB 728, 731.

b. *The March 24 speeches*. The testimony as to the speeches made to the day and night crews on March 24 has been earlier set out. Generally, the speeches reinforced the violative statements contained in the letters. Specifically, I credit the testimony of employee Destefanis that, during the day meeting, Robert Pinter stated that selection of the Union would mean the establishment of job classifications from which the employees could not escape. Under *Gissel*, such a statement, absent a showing that this consequence is "demonstrably probable," constitutes a threat of reprisal. *Tri-City Paving, Inc.*, 205 NLRB 174; *Felsa Knitting Mills, Inc.*, 208 NLRB 504, 508; *Schwab Foods, Inc.*, 223 NLRB No. 43, ALJD pp. 4-5, and cases cited. The testimony about night employees bumping day employees, and day employees being required to work nights, alluding to statements made by Joseph Pinter in response to questions, does not seem sufficiently developed to warrant finding a violation. I do not, moreover, believe that the reluctant and equivocal testimony of employee Sinclair as to the remarks made at the night meeting is an adequate basis for finding a violation.

5. The allegations of threats in August 1975 and thereafter.

The second consolidated complaint alleges that "on or about August 21 and 22, 1975, and on various other dates presently unknown during the months of August through October, 1975," Joseph Pinter, Sr., Robert Pinter, Charles Brown, and "other agents and supervisors presently unknown," unlawfully threatened employees.

With one exception, the evidence apparently comprehended by the complaint 77/ does not, I think, constitute violative conduct. I would not consider Robert Pinter's statement to Bonadonna on August 21 that "All you girls do is lie" to be unlawful. I view similarly his statement that he had written down employee derelictions during the pendency of the charges, couched as it was in his complaint about employees taking advantage of the situation. I am of like mind about Joseph Pinter's statement to Lufker on August 20 that if she "did not like it here, [she] knew where the door was," since the context was Pinter's assertion that she should work together with the other upstairs employees. I also find harmless Charles Brown's question to Lufker on September 30 if she was "filing charges"; Lufker had already filed charges on September 11 and 23.

I do find violative, however, Joseph Pinter's statement to Lufker on August 21, "Why didn't you open your mouth? You always seem to open it at the wrong time." The second sentence plainly implied displeasure with Lufker's testimony of August 18, and, I would think, would reasonably tend to discourage an employee from engaging in like conduct in the future. 78/ Accordingly, I conclude that, by the foregoing statement, Respondent interfered with, restrained, and coerced employees in the exercise of their Section 7 rights. In all other respects, I shall recommend that this allegation be dismissed.

E. The Alleged Violation of Section 8(a)(5)

In alleging that Respondent violated Section 8(a)(5) by refusing on and after January 20, 1975, to bargain with the Union as requested by Union representative Schneir, General Counsel advances an unusual theory for establishing the Union's majority status. 79/

77/ As indicated, General Counsel has filed no brief.

78/ While the statement did not inhibit Lufker, the test, of course, is its reasonable tendency to do so. N.L.R.B. v. Illinois Tool Works, 153 F. 2d 811, 814 (C.A. 7).

79/ The General Counsel took the position at the hearing that it was predicating the Section 8(a)(5) violation only upon a finding of the Union's majority representation of the employees.

Between the January 20 demand for recognition and March 26, the date of the election, the agreed-upon bargaining unit remained constant at 35 active employees. General Counsel would add to this group the 4 employees terminated on January 17 and 20, arriving at a total complement of 39 unit employees during this period. In order to demonstrate a majority of 20 Union supporters, General Counsel would then take the 14 votes cast for the Union on March 26, and add to them authorization cards signed, prior to the election, by employees Charlotte Destefanis, Santa Stansell, and the 4 discriminatees, thus arriving at a total of 20 indications of support for the Union, registered in one way or another by March 26.

Parenthetically, it seems to me that N.L.R.B. v. Gissel Packing Co., supra, would permit the issuance of a bargaining order remedy "without need of inquiry into majority status on the basis of cards or otherwise, in 'exceptional cases' marked by 'outrageous' and 'pervasive' unfair labor practices," 395 U.S. at 613, and cases cited at 614. See also J.P. Stevens & Co. v. N.L.R.B., 441 F. 2d 514, 519 (C.A. 5): "First, even where a union has never demonstrated majority support in an appropriate unit, the Board may issue a bargaining order where the employer unfair labor practices are so 'outrageous' and 'pervasive' that their 'coercive effects cannot be eliminated by the application of traditional remedies, with the result that a fair and reliable election cannot be had." This might be such a case.

As indicated, however, General Counsel is making no claim to a nonmajority bargaining order here, and, accordingly, appears to be proceeding on the basis of the Gissel approval of the use of a bargaining order "in less extraordinary cases marked by less pervasive practices." In such cases, the Court stated, "The Board's authority to issue such an order on a lesser showing of employer misconduct is appropriate, we should reemphasize, where there is also a showing that at one point the union had a majority . . . ." (395 U.S. at 614, emphasis added).

I see no theoretical obstacle to proving that "at one point the union had a majority" by combining votes in an election and authorization cards signed earlier. In Gissel, the Court referred to the "acknowledged superiority of the election process," but also recognized that "where an employer engages in conduct disruptive of the election process, cards may be the most effective--perhaps the only--way of assuring employee choice." 395 U.S. at 602. One would suppose that 14 election votes and 6 cards constitute a more reliable indication of employee choice than would 20 cards.

Accordingly, combining the six cards signed by the four discriminatees [80] and employees Destefanis and Stansell, and adding them to the 14 votes cast in the March 26 election, would mean that the Union "at one point . . . had a majority" in the 39-employee unit, Gissel Packing Co., supra, 395 U.S. at 614. [81]

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[80] Discriminatees are considered eligible members of the unit. East Coast Equipment Corporation and Steco Sales, Inc., supra.

[81] While it could be argued that Respondent's economic decline in February and March might have led to a legitimate layoff of one or more of the employees who voted for the Union, but that no such layoff was made (Continued)

The efficac[illegible] the cards signed by Charlott[illegible]estefanis and Santa Stansell is, however, in dispute.

Respondent claims that Destefanis, who was secretary to general manager Jacoby, is a confidential employee; for this reason, it challenged her ballot cast in the March 26 election, and the challenge has never been resolved. However, after the preelection hearing on the petition in which Respondent raised this same question, the Regional Director held, in his Decision and Direction of Election dated February 28, 1975, that Destefanis was not a confidential employee. Since Respondent never requested the Board to review this determination, it would appear that Section 102.67(f) of the Board's Rules and Regulations precludes relitigation of the issue in this case, clearly a "related subsequent unfair labor practice proceeding." There are some cases which have permitted relitigation of employee status, Leonard Niederriter Company, Inc., 130 NLRB 113, 115, n. 2., Southern Airways Company, 124 NLRB 749, n. 2, but I consider them inapposite. At any rate, without detailing the evidence, I think it clear that Destefanis was not a confidential employee within the contemplation of Board doctrine. Cf. West Chemical Products, Inc., 221 NLRB No. 45. 82/

As to Stansell, she testified that she signed a card at some time prior to the election only because Barber persistently urged her to do so; 83/ that Stansell was opposed to the Union; and that she signed the card only because Barber persuaded her that doing so would help Barber secure reinstatement. While I believed Stansell's testimony in this respect, I think the record is clear that she was not misled about the effect of signing the authorization card.

I would consider this card valid under the Court's holding in Gissel Packing Co., supra. There, the Court "reject[ed] any rule that requires a probe of an employee's subjective motivations" and held that "employees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature." 395 U.S. at 607, 608. Stansell's resistance itself proves that she very well understood what she was doing. I have no doubt that cards are signed and ballots cast for a union contrary to the personal wishes of employees and only to placate insistent spouses, sweethearts, and friends; as long as the signer or voter understands the import of his act, the designation is valid. 84/ See Gissel Packing, supra, 395 U.S. at 603-604, on this question.

81/ (Continued) because Respondent had already reduced its force by the termination of the four employees, the short answer is that such speculation must be resolved against the wrongdoer.

82/ Furthermore, Destefanis became an "on-hand clerk" in June 1975, when Jacoby went into semi-retirement. No one has replaced Jacoby as general manager.

83/ Stansell did not vote in the election because she was on vacation.

84/ Stansell's testimony that, at some point, Barber told her that the purpose of signing was "[s]o that the union could come in so that everybody could vote and get a chance to vote the way they want" is indistinguishable from the kind of representation that the Gissel Court held to be no basis for vitiating a card. See 395 U.S. at 608, referring to n. 5 at 584.

I conclude, therefore, that as of March 26, 1975, the Union enjoyed majority status in the clerical unit which voted that day. In view of the unfair labor practices which I have found here, including the discrimination practiced against Barber, Pagliarulo, Healy, Gulbrandsen, Bonadonna, and Lufker, I have no doubt that a bargaining order is warranted under the standards announced in Gissel Packing Co., supra.

F. The Objections to the Election

As discussed, the Regional Director has referred to me for determination three of the five objections filed by the Union alleging misconduct affecting the results of the March 26, 1975, election.

With respect to Objection No. 3, I have found that Respondent's refusal to admit Gulbrandsen, Healy, Barber, and Pagliarulo to its premises during the polling hours on the day of the election constituted a violation of Section 8(a)(1). With respect to Objections No. 4 and 5, I have found that by its three preelection letters to the employees and its first speech of March 24, 1975, Respondent violated Section 8(a)(1). Under prevailing precedent, "Conduct violative of Section 8(a)(1) is, a fortiori, conduct which interferes with the exercise of the free and untrammeled choice in an election," Monroe Manufacturing Company, 200 NLRB 62, 63, n. 3; Dal-Tex Optical Company, 137 NLRB 1782, 1786-1787. I therefore recommend that the election held on March 26, 1975, be set aside.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Truckdrivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Vera Barber and Beatrice Pagliarulo on January 17, 1975; by laying off Jayne Healy and Deborah Gulbrandsen on January 20, 1975; and by constructively discharging Doris Bonadonna on August 22, 1975, and thereafter refusing to reemploy her, Respondent has violated Section 8(a)(3) and (1) of the Act.

4. By subjecting Diane Lufker to closer supervision then she previously had been given, on August 21, 1975, and by changing its lateness and sick leave policies in September 1975 so as to provide Lufker with less employment then she previously had received, and normally would have received, Respondent has violated Section 8(a)(1),(3), and (4) of the Act.

5. By the threats of reprisals, anticipatory refusal to bargain, and promise of benefits contained in its letters of February 19, March 18, and March 24, 1975, and its speech of March 24, 1975; by its refusal on March 26, 1975, to admit prospective voters to the polling place; and by its criticism of Diane Lufker on August 21, 1975, for having testified before the Board, Respondent has violated Section 8(a)(1) of the Act.

6. The appropriate unit for collective bargaining is:

> All full time and regular part time office clerical employees of Respondent, employed at its Carll's Path, Deer Park, New York, plant, exclusive of drivers, helpers, warehousemen, maintenance and confidential employees, guards, and all supervisors as defined in Section 2(11) of the Act.

By refusing, on and after March 26, 1975, to recognize and bargain with Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of Respondent's employees in the unit described above, Respondent has violated Section 8(a)(5) and (1) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of section 2(6) and (7) of the Act.

8. Except as set out above, Respondent has not violated the Act in any other respect alleged in the complaints.

The Remedy

In order to remedy the unfair labor practices found herein, I shall recommend that Respondent be required to cease and desist therefrom and take certain affirmative action.

I shall recommend that, upon request, Respondent recognize and bargain collectively with the Union as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, hours, and other terms and conditions of employment. I shall also recommend that the election of March 26, 1975, be set aside.

Having found that the Respondent discriminatorily discharged Vera Barber and Beatrice Pagliarulo on January 17, 1975, discriminatorily laid off Jayne Healy and Deborah Gulbrandsen on January 20, 1975, and discriminatorily caused the discharge of Doris Bonadonna on August 22, 1975, and thereafter discriminatorily refused to reemploy her, I shall recommend that Respondent be ordered to offer these employees immediate and full reinstatement, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered from the time of their terminations to the date of the Respondent's offer of reinstatement. Their backpay shll be computed in accordance with F.W. Woolworth Company, 90 NLRB 289, with interest computed as prescribed in Isis Plumbing & Heating Company, 138 NLRB 716. Since it appears that Respondent promulgated its rule forbidding employees to work part time on days on which they have medical appointments or are late in arriving at the office for the purpose of discriminating against Diane Lufker, I shall recommend that Respondent be required to rescind any such rule. I shall further recommend that Respondent reimburse Diane Lufker, and any other employee affected by application of the rule, for any loss of earnings occasioned by the enforcement of the foregoing rule, with interest as prescribed in Isis Plumbing & Heating Company, *supra.*

I shall also recommend that Respondent be required to post appropriate notices.

Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, I shall issue the following recommended: 85/

ORDER

Pinter Bros., Inc., Town of Deer Park, County of Suffolk, State of New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively in good-faith, upon request, with Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of all the employees in the appropriate unit set forth in Paragraph 6 of the Conclusions of Law herein with respect to rates of pay, hours, and other terms and conditions of employment.

(b) Discharging or otherwise discriminating against employees because of any activities on behalf of Local Union No. 807, or any other labor organization.

(c) Threatening employees for assisting or supporting Local Union No. 807, or any other labor organization, promising benefits to employees for refusing to support Local Union No. 807, or any other labor organization, threatening to refuse to bargain with Local Union No. 807, or any other labor organization, and refusing to allow prospective voters to participate in a Board election.

(d) Discriminating against employees for giving testimony before the National Labor Relations Board.

(e) In any other manner, interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or to refrain from any and all such activities.

Take the following affirmative action which is necessary to effectuate the policies of the Act:

85/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Offer to Vera Barber, Beatrice Pagliarulo, Jayne Healy, Deborah Gulbrandsen, and Doris Bonadonna full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Make Diane Lufker and other employees whole for all losses they may have incurred as a result of the promulgation in September, 1975, of Respondent's discriminatory rule refusing to permit employees to work part-time on days on which they have medical appointments or are late for work, in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Rescind the discriminatory rule promulgated in September, 1975, prohibiting employees from working on days on which they have medical appointments or are late for work.

(d) Upon request, bargain collectively with Truckdrivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the appropriate unit set forth above with respect to rates of pay, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(e) Preserve, and upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payroll records, timecards, personnel records and reports, and all other records necessary, or appropriate, to analyze the amount of backpay due.

(f) Post at its place of business in Deer Park, County of Suffolk, State of New York, copies of the attached notice marked "Appendix B." 86/ Copies of the notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's authorized representative, shall be posted by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 29, in writing, within 20 days from the date of the receipt of this Order, what steps the Respondent has taken to comply herewith.

IT IS ALSO ORDERED that those portions of the complaints found to be without merit are hereby dismissed.

86/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

IT IS FURTHER ORDERED that the election conducted in Case 29-RC-2888, on March 26, 1975, be, and it hereby is, set aside.

Dated, Washington, D.C.
April 30, 1976

Bernard Ries
Bernard Ries
Administrative Law Judge

APPENDIX A

Change	From	To
p. 83, l. 24	"15th"	"16th"
p. 83, l. 25	"16th"	"15th"
p. 265, l. 12	"any"	"no"
p. 274, l. 19	"Judge Ries:"	--
p. 276, l. 23	"Judge Ries"	"Mr. Burstein"
p. 438, l. 16	"those"	"notice"
p. 498, l. 25	"subject"	"subjective"
p. 499, l. 1	"I have reason"	"reason"
p. 511, l. 22	"will be"	"was at"
p. 527, l. 21	"not"	"no"
p. 529, l. 15	"he"	"she"
p. 534, l. 11	"I think"	"JUDGE RIES: I Think"
p. 536, l. 12	"JUDGE RIES: On the contrary"	"On the contrary"
p. 536, l. 19	"Burstein"	"Weinrich"
p. 542, l. 22	"found dead"	"founded"
p. 623, l. 13	"Schneider"	"Ries"
p. 697, l. 11	"Sponadana"	"Bonadonna"
p. 767, l. 12	"that he"	"that if he"
p. 905, l. 4	"897"	"807"
p. 907, l. 13	"refute"	"review"
p. 956, l. 24	"18th"	"17th"
p. 1212, l. 25	"Mangan"	"Ries"
p. 1222, l. 1	"don't anything"	"don't know anything"
p. 1294, l. 22	"Weinrich"	"Ries"
p. 1329, l. 1	"THE WITNESS"	"MR. LANE"

Change	From	To
p. 1370, l. 1	"In any event"	"MR. BURSTEIN: In any event"
p. 1494, l. 3	"not"	"a"
p. 1516, l. 2	"dated"	"based"
p. 1517, l. 16	"Subsequent to correspondence"	"Subsequent correspondence"
p. 1525, ll. 1 and 3	"decided"	"recited"
p. 1526, l. 14	"PAT"	"TED"
p. 1561, l. 23	"locked"	"logged"
p. 1569, l. 1	"Burstein"	"Mangan"
p. 1599, l. 25	"You workers are"	"Your work is not"
p. 1603, l. 22	"with"	"when"
p. 1607, l. 8	"from"	"to"
p. 1623, l. 22	"she"	"he"
p. 1659, l. 4	"him"	"them"
p. 1668, l. 9	"wanted"	"went on"
p. 1669, l. 5	"would"	"could"
p. 232, l. 24 (Nov. 19)	"to me. That"	"to me. Q. That"
p. 242, l. 24 (Nov. 19)	"objected"	"rejected"
p. 242, l. 25 (Nov. 19)	"I'll"	"I will not"
p. 246, l. 14 (Nov. 19)	"programming"	"probing"
p. 247, l. 24 (Nov. 19)	"this"	"there"
p. 260, l. 18 (Nov. 19)	"didn't affect"	"didn't just affect"
p. 278, l. 17 (Nov. 19)	"absentees"	"absences"
p. 280, l. 11 (Nov. 19)	"9:30"	"8:30"
p. 302, l. 19 (Nov. 19)	"Pat--not"	"Pat -- Q. Not"
[illegible]. 337, l. 25 (Nov. 19)	" means before 8:30"	"means between 8:30"

APPENDIX B

FORM NLRB-4727
(9-69)

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

AFTER A TRIAL IN WHICH ALL SIDES HAD A CHANCE TO GIVE EVIDENCE, THE NATIONAL LABOR RELATIONS BOARD HAS FOUND THAT WE VIOLATED THE NATIONAL LABOR RELATIONS ACT AND HAS ORDERED US TO POST THIS NOTICE.

We intend to abide by the following:

The Act gives all employees these rights:

To engage in self-organization;
To form, join, or help unions;
To bargain collectively through representatives
of their own choosing;
To act together for collective bargaining or
other mutual aid or protection;
To refrain from any or all these things.

WE WILL NOT discharge or otherwise discriminate against any employees to discourage membership in TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization, or as a reprisal against employees for testifying before the Board.

WE WILL NOT threaten employees or promise benefits to employees in order to affect their support for TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization.

WE WILL NOT interfere with the right of prospective voters to participate in a Board election, should one be held in the future.

WE WILL bargain, upon request, with TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA as the exclusive collective-bargaining representative of all employees in the following unit:

All full time and regular part time office clerical employees of PINTER BROS., INC., employed at its Carlls Path, Deer Park, New York, plant, exclusive of drivers, helpers, warehousemen, maintenance and confidential employees, guards, and all supervisors as defined in Section 2(11) of the Act.

WE WILL offer Vera Barber, Beatrice Pagliarulo, Jayne Healy, Deborah Gulbrandsen, and Doris Bonadonna immediate and full reinstatement to their former jobs and WE WILL compensate them with interest for any loss of pay they may have suffered because we terminated them.

WE WILL rescind our rule promulgated in September 1975 forbidding employees to work part time on days that they have medical appointments or arrive late for work, and WE WILL compensate Diane Lufker and any other employees affected by such rule for any loss of pay they may have suffered as a result of application of such rule.

PINTER BROS., INC.
(Employer)

Dated ____________ By ______________________________
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court St., 4th Floor, Brooklyn, NY 11241
(Tel. No. 212 - 666-5386).

369

227 NLRB No. 123

FPW

D--1964
Deer Park, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FILE IN
FORMAL FILE
D P

PINTER BROS., INC.

and

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Cases 29--CA--4281,
29--CA--4554,
29--CA--4570, and
29--RC--2888

and

Case 29--CA--4594

DIANE M. LUFKER

and

Case 29--CA--4601

DORIS BONADONNA

DECISION AND ORDER

On April 30, 1976, Administrative Law Judge Bernard Ries issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1/]

[1/] Respondent excepts to the credibility findings made by the Administrative Law Judge and contends that he was "not only biased but unfair and, at times, intemperate." It is the Board's established policy not to overrule the Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all the relevant evidence convinces us that the
(continued)

and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The Administrative Law Judge properly found, inter alia, that Respondent engaged in unlawful conduct in violation of Section 8(a)(3) of the Act by discharging employees Vera Barber and Beatrice Pagliarulo on January 17, 1975,[2] and by laying off employees Jayne Healy and Deborah Gulbrandsen on January 20. In addition, the Administrative Law Judge found that Respondent violated Section 8(a)(1) of the Act when it refused to admit the four employees to its premises for the purpose of voting in the election held on March 26.[3] We agree with the Administrative Law Judge that said conduct as well as other conduct by Respondent "interfered with the exercise of the free and untrammeled choice" in the election, but Member Penello finds in agreement with Member Walther that it is unnecessary to pass on the Administrative Law Judge's 8(a)(1) finding as to it.[4]

The Administrative Law Judge found, without exception from Respondent as to his manner of computing majority status, that as of March 26 the Union had a majority of 20 adherents in the appropriate unit of 39 employees. He reached this conclusion by combining the 14 votes cast for the Union and the authorization cards signed by employee Charlotte Destefanis, whose ballot was challenged,[5] and

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[1] resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] All dates below refer to 1975.

[3] As indicated by the Administrative Law Judge, the Union lost the election with 14 employees voting for it and 18 against, and 1 employee voting subject to challenge.

[4] For reasons given by the Administrative Law Judge, Member Fanning would adopt this 8(a)(1) finding.

[5] As indicated by the Administrative Law Judge, Destefanis' card was valid because she was not a confidential employee and was therefore properly in the unit.

by 5 other employees who did not participate in the election, namely, Santa Stansell and the discriminatees referred to above. In the absence of an exception thereto, we adopt the Administrative Law Judge's holding as to the Union's majority status.

Contrary to our dissenting colleague, Respondent's exception to the 8(a)(5) finding relies principally on the argument, which was properly rejected by the Administrative Law Judge, that "the evidence nowhere supports a conclusion that Respondent's conduct was outrageous and pervasive." It is also clear that Respondent's exception, rather than questioning the card-ballot formula itself, focuses directly on the alleged impropriety of including in the computation the card of employee Stansell which was correctly found valid by the Administrative Law Judge because she fully understood the import of her act in signing it.[6/]

However, assuming arguendo that Respondent did except to the method of computing the Union's majority, the dissent errs in invoking the Supreme Court's decision in Gissel Packing[7/] for the proposition that majority status must be based exclusively on cards or solely on ballots cast in a Board election but not on a combination of both. Although the Court dealt with the validity of cards as an alternative means of determining a majority when "an employer engages in conduct disruptive of the election process,"[8/] it nowhere indicates that the selection of the bargaining representative cannot be ascertained by counting both cards and the ballots cast in favor of the union.

[6/] In this connection, it is significant that Respondent's brief in support of its exceptions makes no reference whatever to the method of computation but objects to the bargaining order solely on the ground that its conduct was noncoercive and protected by the free speech provisions of the Act.

[7/] N.L.R.B. v. Gissel Packing Co., Inc., 395 U.S. 575 (1969).

[8/] 395 U.S. at 602.

The dissent defies all logic by leaping from the Court's statement that cards may be "the most effective---perhaps the only---way of assuring employee choice" to the unwarranted categorical conclusion that "only the cards" may be relied upon when an employer engages in conduct which disrupts an election. The sentence quoted by our colleague is found in the section of the Court's opinion which deals with the matter of the reliability of cards. But in another section which pertains to how a union can establish a bargaining obligation, the Court made the following statements which do not support the "only the cards" approach of the dissent:

> The most commonly traveled route for a union to obtain recognition as the exclusive bargaining representative of an unorganized group of employees is through the Board's election and certification procedures under § 9(c) of the Act . . . ; it is also, from the Board's point of view, the preferred route. A union is not limited to a Board election, however, for, in addition to § 9, the present Act provides in § 8(a)(5) . . .as did the Wagner Act in § 8(5), that "[i]t shall be an unfair labor practice for an employer . . . to refuse to bargain collectively with the representative of his employees, subject to the provisions of section 9(a)." Since § 9(a), in both the Wagner Act and the present Act, refers to the representatives as the one "designated or selected" by a majority of the employees without specifying precisely how that representative is to be chosen, it was early recognized that an employer had a duty to bargain whenever the union representative presented "convincing evidence of majority support." Almost from the inception of the Act, then, it was recognized that a union did not have to be certified as the winner of a Board election to invoke a bargaining obligation; it could establish majority status by other means under the unfair labor practice provision of § 8(a)(5)---by showing convincing support, for instance, by a union-called strike or strike vote, or . . . by possession of cards. . . .[9]

The Court recognized that "secret elections are generally the most satisfactory---indeed the preferred---method of ascertaining whether a union has majority support."[10] Where, as here, a number of employees vote for the union despite the employer's outrageous and pervasive unfair labor practices, it cannot reasonably be argued that their ballots should not be accepted as an endorsement of the union. The dissent does not challenge the Court's acceptance of cards, which are "admittedly inferior to the election process," as an adequate reflection of employee sentiment. A fortiori, the votes for the Union are eminently acceptable in view of the Court's statement that the election process is of "acknowledged superiority" to cards.

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[9] 395 U.S. at 596--597.

[10] 395 U.S. at 602.

In sum, the dissent's position concerning the card-ballot formula boils down to an untenable protest against its novelty. Accordingly, as the cards and the ballots for the Union constitute valid expressions of employee sentiment, the Administrative Law Judge properly counted both in finding that the Union was selected by a majority of Respondent's employees.

In view of the foregoing, we conclude in agreement with the Administrative Law Judge that a bargaining order is warranted under the standards set forth by the Supreme Court in Gissel Packing Co., Inc. We further find that Respondent's bargaining obligation began on March 26, the date when the Union attained a majority and Respondent continued its refusal to accede to the Union's demand of January 20 for recognition and bargaining.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pinter Bros., Inc., Deer Park, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

Dated, Washington, D.C. January 12, 1977

John H. Fanning, Member

John A. Penello, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

MEMBER WALTHER, dissenting in part:

I disagree with my colleagues' conclusion that General Counsel has established that the Union ever attained majority status in this proceeding, and therefore I disagree with their further conclusion that a bargaining order is warranted here. Accordingly, I dissent.

My colleagues affirm the Administrative Law Judge's finding that the Union attained majority status on March 26, 1975---the date the Union lost the election conducted herein. Despite this election loss, the Administrative Law Judge found, on a most unusual theory proposed by the General Counsel which combines election votes and authorization cards, that on the day it in fact lost the election the Union nevertheless had 20 adherents in a unit of 39 employees. To reach the necessary majority figure of 20, the Administrative Law Judge first counted the 14 employees who voted for the Union at the election (There were also 18 votes against the Union on that day). Next, the Administrative Law Judge found that prior to the election four employees who had signed cards were discharged in violation of Section 8(a)(3) of the Act. The Administrative Law Judge added these four employees into the unit and counted their cards also. Lastly, the Administrative Law Judge noted that two other employees (one who did not vote in the election, and one who did but whose ballot was challenged but then overruled by the Administrative Law Judge) had signed authorization cards before the election. The Administrative Law Judge counted both these employees' cards. Therefore, the Administrative Law Judge found the Union had attained majority status on the election date by combining the 14 votes for the Union and 6 prior signed authorization cards to reach a total of 20 adherents in a unit of 39 employees.

I note at the outset that while my disagreement with the Administrative Law Judge's conclusion runs to the fundamental theory on which General Counsel has attempted to predicate majority, I also disagree with my colleagues' adoption of the theory based on their finding that Respondent filed no exception to the Administrative Law Judge's use of it. Such a conclusion is totally incorrect, for Respondent has attempted before the Board to except to the General Counsel's theory and the Administrative Law Judge's conclusions based thereon. Thus, in its brief, Respondent speaks of the "make-weight argument" on majority urged by the General Counsel and, most importantly, Respondent also argues there was a "demonstrated nonunion majority" and cites to that portion of the Administrative Law Judge's Decision where he computed majority. In such circumstances, I believe my colleagues will have a long road to hoe in any future attempt to defend this highly unique theory of computing majority on the grounds of Respondent's supposed failure to except to the Administrative Law Judge's findings based thereon.

However, as I have noted above, my primary opposition to my colleagues' conclusions is bottomed on my disagreement with the General Counsel's theory, itself, whereby he attempts to establish majority by combining authorization cards with employee votes in an election which is ultimately set aside. I am of the view that one simply cannot set aside an election as was done here and thereafter still count votes for the Union. If the election is set aside, so too must the tally be---both for, as well as against, the Union.

It seems reasonable to conclude here that however many cards the Union had before the election it never had a card majority, or else this intriguing theory would not have been forthcoming, and the General Counsel would have relied on a traditional card-based majority in seeking a bargaining order. It is crystal clear the Union did not gain a majority in the election. Thus, the Union never had a card majority or an electoral majority. My colleagues, however, now construct another way of obtaining majority, i.e., a card-election (invalid though it was) majority. I do not subscribe to such a theory which allows unions which have never established a majority by either cards or an election to secure a bargaining order and thereby be forced upon the employees.

I note that in adopting the General Counsel's theory the Administrative Law Judge found that General Counsel was bringing the theory under the second category of unfair labor practice situations noted by the Supreme Court in Gissel,[11] which demanded in such second category establishment of majority before a bargaining order could issue. The Administrative Law Judge then noted that the Gissel Court had approved bargaining orders in such situations "where there [was] . . . a showing that at one point the union had a majority . . . ."[12]

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[11] N.L.R.B. v. Gissel Packing Co., Inc., 395 U.S. 575, 613--615 (1969).

[12] 395 U.S. at 614 (emphasis supplied).

The Administrative Law Judge then concluded, however, without discussion, that, based on *Gissel*, there was "no theoretical obstacle to proving that 'at one point the union had a majority' by combining votes in an election and authorization cards signed earlier."[13] The Administrative Law Judge thereby greatly misconstrued *Gissel*, which nowhere intimated such a conclusion.

I note that, at the outset of its *Gissel* decision, the Supreme Court stated, in describing three of the four cases then before it,[14] that "[i]n each case, the Union waged an organizational campaign, obtained authorization cards *from a majority of employees* in the appropriate bargaining unit, and then, on the basis of the cards, demanded recognition by the employer."[15] Then, in generally describing the Board's finding in each case, the Supreme Court noted the Board had found that "the Union had obtained valid authorization cards *from a majority* of the employees in the bargaining unit and was thus entitled to represent the employees for collective bargaining purposes . . . ."[16] And, finally, in indicating that a bargaining obligation could arise by means other than a Board-ordered election, the *Gissel* Court noted:

> Almost from the inception of the Act . . . it was recognized that a union did not have to be certified as the winner of a Board election to invoke a bargaining obligation; it could establish *majority status* by other means under the unfair labor practice provision of § 8(a)(5)---by showing convincing support, for instance, by a union-called strike or strike vote, or, as here, by possession of cards signed *by a majority of the employees* authorizing the union to represent them for collective bargaining purposes.

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[13] ALJD, III, E, par. 5.

[14] The Supreme Court's decision in *Gissel* joined four separate proceedings for decision. The proceeding not referred to in the quote below would have also fallen under the facts noted in the quote.

[15] 395 U.S. at 580 (emphasis supplied).

[16] 395 U.S. at 583 (emphasis supplied, footnote omitted).

> We have consistently accepted this interpretation of the Wagner Act and the present Act, *particularly as to the use of authorization cards*.[17]

In light of the above, then, I think it clear that the Supreme Court's statement in *Gissel*, indicating the appropriateness of a bargaining order in circumstances where there is sufficient showing of employer misconduct, and where "at one point the union had a majority" is not a license for the result reached here. Rather, consistent with the above discussion, I think it clear that a majority on cards must have been proven here before a bargaining order may be justified. Such was not demonstrated here and thus no bargaining order is warranted.[18]

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[17] 395 U.S. at 596--597 (emphasis supplied, footnotes omitted).

[18] In their decision, my colleagues attempt to answer my disagreement by contending themselves, as the Administrative Law Judge did, that the Supreme Court in *Gissel* "nowhere indicate[d] that the selection of the bargaining representative cannot be ascertained by counting both cards and the ballots cast in favor of the union." My colleagues purport to support this contention with various quotes from the Supreme Court's *Gissel* opinion, at 395 U.S. at 602, which note the superiority of the election process and the inferiority, yet viability, of authorization cards. My colleagues mix these two thoughts together to conclude that the card-ballot theory is valid. I would simply note, however, that the most relevant sentence of the *Gissel* opinion, at 395 U.S. at 602, runs directly counter to my colleagues' argument. That sentence reads:

> The acknowledged superiority of the election process, however, does not mean that cards are thereby rendered totally invalid, for where an employer engages in conduct disruptive of the election process, cards may be the most effective---perhaps the only---way of assuring employee choice.

I submit that this sentence, while it clearly indicates that cards may be looked to where an election is set aside, also indicates that *only* the cards may be looked to in such a circumstance. Thus, my colleagues are betrayed by that very portion of the *Gissel* opinion upon which they attempt to build their card-ballot theory's validity.

My colleagues assert that this analysis "defies all logic." In support of their conclusion, my colleagues rely upon another quotation from *Gissel* which, in actuality, only further supports my position. As the majority correctly points out, the Supreme Court indicated that majority status need not be established through a Board election but can be

(continued)

Further, I note two intriguing developments that arise from the use of the General Counsel's theory. First, I note that one of the card signers whose card is counted did not vote in the election because she was on vacation on the election date. I await the case when, based on the theory my colleagues embrace, the argument is made that majority has not been established, in circumstances similar to those here,[19] where a union received 10 votes in the election; there were 9 votes against; and a 10th employee who did not sign a card and opposed the union was on vacation. Will the same majority hereafter find that the employer can on such facts refuse to bargain? I should hope not.

Next, I note my colleagues also count the card of another employee who did vote in the election. Her ballot was challenged, however. The Administrative Law Judge overruled that challenge in order to include her in the unit but then did not order that her ballot, the last valid expression of her desires on unionization, be counted. Rather, he counted her card. If my colleagues insist that the election date is to be the date on which majority was attained, then I submit that the employee's ballot, validly cast on the election date, and not her earlier signed card would be counted.

I wish to clearly state that I will continue, of course, to find it appropriate, where the circumstances warrant, to issue a bargaining order based on a card majority,

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[18] established through other means such as "by showing convincing support, for instance, by a union-called strike or strike vote, or . . . by possession of cards . . . ."(Emphasis supplied.) I can only point out that the commonly accepted and until now only definition of "or" is a particle "to connect words, phrases, or clauses representing alternatives." The American College Dictionary, p. 851 (Random House, 1970). My colleagues' own logic in this regard calls to mind the observations of Joseph Wood Krutch, "Logic is the act of going wrong with confidence."

[19] I.e., unfair labor practices which otherwise warrant setting aside an election.

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or a certification based on a majority vote. But I will not issue a bargaining order based on the patchwork theory offered here that establishes majority in neither cards nor the vote but attempts to combine both to form a majority, after setting aside the election on which a part of the majority itself is based. For, to do so runs contrary to the specific charge of the Supreme Court in Gissel that "effectuating ascertainable employee free choice [in circumstances as here is] as important a goal as deterring employer misbehavior."[20/]

For the foregoing reasons, I disagree with my colleagues' issuance of a bargaining order here.[21/]

Dated, Washington, D.C.   January 12, 1977

Peter D. Walther,   Member

NATIONAL LABOR RELATIONS BOARD

[20/] 395 U.S. at 614.

In sum, my colleagues categorize my dissent as simply being a protest against the "novelty" of the card-ballot theory. Far from this, my dissent is a protest against my colleagues' deviation from the norms for issuing a bargaining order and a protest against their reliance on a theory which, as I have explained, is quite simply incorrect.

[21/] Instead, I would set aside the first election based on the unfair labor practices the Administrative Law Judge found Respondent committed and direct a second election.

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The Act gives all employees these rights:

To engage in self-organization
To form, join, or help unions
To bargain collectively through representatives of their own choosing
To act together for collective bargaining or other mutual aid or protection
To refrain from any or all these things.

WE WILL NOT discharge or otherwise discriminate against any employees to discourage membership in Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, or as a reprisal against employees for testifying before the Board.

WE WILL NOT threaten employees or promise benefits to employees in order to affect their support for Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

WE WILL NOT interfere with the right of prospective voters to participate in a Board election, should one be held in the future.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL NOT refuse to recognize and bargain collectively in good faith, upon request, with Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of all the employees in the appropriate unit described below with respect to rates of pay, hours, and other terms and conditions of employment.

WE WILL bargain, upon request, with Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of all employees in the following unit:

All full-time and regular part-time office clerical employees of Pinter Bros., Inc., employed at its Carils Path, Deer Park, New York, plant, exclusive of drivers, helpers, warehousemen, maintenance and confidential employees, guards, and all supervisors as defined in Section 2(11) of the Act.

WE WILL offer Vera Barber, Beatrice Pagliarulo, Jayne Healy, Deborah Gulbrandsen, and Doris Bonadonna immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, and WE WILL compensate them with interest for any loss of pay they may have suffered because we terminated them.

WE WILL rescind our rule promulgated in September 1975 forbidding employees to work part time on days that they have medical appointments or arrive late for work, and WE WILL compensate with interest Diane Lufker and any other employees affected by such rule for any loss of pay they may have suffered as a result of application of such rule.

PINTER BROS., INC.
(Employer)

Dated ______________________ By ______________________________
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212--330--7709.